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CIS Congressional Information Service
Washington, D.C.

100th Congress
2d Session

COMMITTEE PRINT

S. PRT.
100-162

EEOC HEADQUARTERS OFFICIALS PUNISH DISTRICT DIRECTOR FOR EXPOSING HEADQUARTERS MISMANAGEMENT

A MAJORITY STAFF REPORT

OF THE

SPECIAL COMMITTEE ON AGING
UNITED STATES SENATE

DECEMBER 1988

NOTE.—This document has been printed for informational purposes. It does not represent either findings or recommendations formally adopted by the Committee

Serial No. 100-Q

Printed for the use of the Special Committee on Aging

U.S. GOVERNMENT PRINTING OFFICE
92-277 WASHINGTON : 1989

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

S142-5

SPECIAL COMMITTEE ON AGING

JOHN MELCHER, Montana, *Chairman*
MAX I. RICHTMAN, *Staff Director*

(II)

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PUBLICATION NOTES

For brevity purposes, the following-named EEOC officials, whose names appear frequently in this Report and the Chronology which follows, are each referred to by last name only:

EEOC DISTRICT OFFICE DIRECTORS

Bivins or Fields—Patricia T. Fields (later Bivins), District Director, EEOC New Orleans District Office.

Bruner—Lynn Y. Bruner, District Director, EEOC St. Louis District Office.

EEOC HEADQUARTERS OFFICIALS

Bennett—Joseph Stanley Bennett, Regional Director, EEOC Region II, until March 15, 1987.

Sayer—Marcia Sayer, EEOC Office of Congressional and Legislative Affairs.

Schmelzer—John Schmelzer, Regional Director, EEOC Field Management Programs-East.

Shelton—Jacquelyn Shelton, Acting Regional Director, EEOC Region II, then Acting Regional Director, EEOC Field Management Programs-West, then Regional Director, EEOC Field Management Programs-West.

Troy—James H. Troy, Director, EEOC Office of Program Operations.

For brevity purposes also, the citations by "BC=" in the text of the report refer to documents and events in the Chronology in this report. The Chronology follows the text of the report.

FOREWORD

On August 17, 1987, the Special Committee on Aging initiated an oversight investigation into the effectiveness of the Age Discrimination in Employment Act (ADEA) of 1967, as amended, on the occasion of the Twentieth Anniversary of its enactment. The Committee's first hearing was held on September 10, 1987.

Because the Equal Employment Opportunity Commission (EEOC) has the responsibility to administer and enforce the ADEA, Chairman Clarence Thomas and Vice Chair R. Gaull Silberman were invited to testify at the initial hearing.

Prior to the hearing, Committee investigators learned of complaints that, because of EEOC processing delays, age discrimination victims' rights were becoming barred by the ADEA two-year statute of limitations before their claims had any definitive action or determination by EEOC.

Therefore, by letter of September 3, 1987, Committee Chairman Melcher requested from Chairman Thomas certain ADEA charge data and information, including data as to ADEA cases which had expired under the ADEA two-year statute of limitations while being processed by EEOC.

EEOC could not produce data responsive to that request at the September 10, 1987 hearing nor in response to subsequent letters between Chairman Melcher and Chairman Thomas nor in response to subsequent meetings between Committee staff and EEOC staff. Finally, by letter of December 23, 1987, EEOC informed the Committee that 63 cases had run the two-year statute during 1986 and 1987 and 15 cases the three-year statute.

On the same date, December 23, 1987, the Daily Labor Report of the Bureau of National Affairs, carried a story quoting Chairman Thomas as admitting, in a press interview, that EEOC had allowed some 900 cases to lapse under the two-year statute and as putting the blame on only a "handful" of EEOC's District Offices. Pretty much the same story appeared on January 4 and January 8, 1988 in each of two other publications. The St. Louis District Office was one of the guilty districts named in the articles.

A January 10, 1988 St. Louis Post-Dispatch article quoted the response of St. Louis District Office Director, Lynn Y. Bruner, to Chairman Thomas' charges as reported in the Los Angeles Times January 8, 1988 article.

Her published response was that the charges were unfair and unjustified, that it took EEOC Headquarters eleven months to respond to her request for assistance in processing the huge backlog of cases which had accumulated before she became the director in August 1986, and that the office did not have enough personnel to process its pending caseload.

It was not until January 25, 1988, that Chairman Thomas notified the Committee of the 900 lapsed cases, for which he blamed primarily eight District Offices. By letter of March 30, 1988, EEOC informed the Committee that 1608 cases had lapsed under the two-year statute, some in each of EEOC's 23 District Offices.

Committee investigators followed up on the news stories by requesting information from Ms. Bruner. She would not provide the Committee with any information unless and until EEOC Headquarters gave her written authorization to do so. She received that written authorization, and by February 11, 1988 letter provided the documents to the Committee, with copies to EEOC Headquarters.

Ms. Bruner testified at the Committee's June 23, 1988 hearing, under subpoena. Her testimony and documents proved crucial elements of the documentation of EEOC's policy and practices with reference to the ADEA statutes of limitations.

Chairman Thomas testified at the final hearing June 24th. He charged the St. Louis District Office with intentionally withholding ADEA charge data from the data system.

Incidents and events before and after Ms. Bruner's testimony raise issues of intimidation, harassment and retaliation, by EEOC superiors of Ms. Bruner, against her as a prospective witness before this Committee, and then afterwards because of her testimony, and also because the memorandums between her and EEOC headquarters documented headquarters policies and practices with reference to the ADEA statutes of limitations.

It should be noted that the Committee needed testimony from key EEOC employees to ascertain the causes of the delays in processing ADEA complaints. The record of the EEOC in handling these cases was clear evidence of malfeasance, of significant harm to individuals who had filed complaints based on age discrimination.

Recently, EEOC admitted that the number of age discrimination victims who lost their rights could be as high as 10,000.

To gather evidence and information on those issues, Committee staff took the depositions of twelve witnesses, seven of whom were EEOC Headquarters officials.

This Report constitutes the findings of Majority Staff of the Committee on those issues involving Ms. Lynn Y. Bruner as Director of the EEOC St. Louis District Office.

We believe the report documents that Ms. Bruner is being victimized for her testimony to the Committee and have, by letter of December 30, 1988, directed the attention of Chairman Thomas to rectify the demotion of Ms. Bruner.

John Melcher

John Melcher
Chairman

FINDINGS

EEOC CHAIRMAN THOMAS AND HIS TOP ADMINISTRATORS PUNISH, AND RETALIATE AGAINST, AN EEOC DISTRICT DIRECTOR WHOSE ACTIONS AND MEMORANDUMS EXPOSED AND DOCUMENTED THEIR MISMANAGEMENT IN ALLOWING THOUSANDS OF AGE DISCRIMINATION VICTIMS TO LOSE THEIR RIGHTS UNDER THE ADEA STATUTES OF LIMITATIONS

Conscientiousness and dedication in her work made Lynn Y. Bruner, the Director of the EEOC St. Louis District Office, an unwitting "whistleblower" in the EEOC family. Events beyond her control picked up her actions and memorandums and made of them the wind which blew the whistle on EEOC official policies and officially condoned practices of long standing which were allowing thousands of age discrimination victims to lose their rights under ADEA statutes of limitations.

The chain of events which picked up first her memorandums, later her actions, started with the initiation of its oversight investigation by the Special Committee on Aging and Chairman Melcher's letter of September 3, 1987 to Chairman Thomas requesting data on the number of ADEA cases which had expired under the ADEA two-year statute of limitations. (BC#17, 18 and 25)

No doubt that data request was immediately assigned by Chairman Thomas to Mr. Troy, Director, Office of Program Operations, the top administrative official responsible for operations and charge management, the next in line below the Chairman from an operations point of view.

No doubt Mr. Troy immediately brought into the process Ms. Shelton and Mr. Schmelzer. They are the next in line below Mr. Troy, directly responsible to him and responsible for the operations of the district offices in their respective sections of the country, and the immediate superior of the District Directors in their respective regions.

Ms. Bruner's performance appraisal for the first half of fiscal year 1987, which ended March 31, 1987, was not critical of her performance. (BC#28) Neither ADEA charges nor ADEA statutes of limitations were even mentioned in the evaluation.

Neither had been mentioned in any of the four Elements which were part of each District Director's SES Agreement for fiscal year 1987. The only case management issues highlighted in Ms. Bruner's performance standards for that fiscal year were the number of 300-day-old cases and reduction of inventory, under performance Element II. (BC#10)

Early in September of 1987 EEOC Headquarters knew that lapsed ADEA charges were going to be an issue and a problem in the oversight investigation by the Senate Special Committee on Aging. Chairman Thomas was a witness at that Committee's first hearing September 10, 1987, and was questioned about lapsed ADEA charges. (BC#26 and 27)

Subsequent events clearly document that prior to the Committee's oversight investigation it was official policy in EEOC Headquarters to ignore the ADEA statutes of limitations.

On October 1, 1987, EEOC Headquarters quietly and without fanfare amended the Official EEOC Compliance Manual to add at the end of Section 2.9, entitled "Charges Warranting Priority Handling," the following new sentence: "ADEA cases where the two year statute of limitations is near to expiring should also be investigated on a priority basis." (BC#30)

Before that amendment the Compliance Manual contained no case management requirement consistent with the ADEA statutes of limitations. It must be that that amendment was drawn up in haste. It is imprecise. What does "near to expiring" mean? 120 days? 60 days? 10 days? Was there panic in the air at EEOC?

Also, the September 1987 revelations of lapsed ADEA charges forced EEOC Headquarters to recognize the ADEA statutes of limitations in the SES Performance Agreement for District Directors, for the first time, by adding a performance substandard based on the ADEA statutes of limitations to the Agreement for FY 1988, effective October 1, 1987.

For FY 1987, the issue of lapsed ADEA charges was dealt with under Element IV of the Agreement, although it was not mentioned in that Element in the Agreement at the start of that fiscal year. For FY 1988, it was mentioned in a substandard of Element III (Resource Management). (BC#10, 37, and 83)

No doubt by the time Ms. Shelton got to the Performance Appraisal and Rating of Ms. Bruner for FY 1987 she and her superior, Mr. Troy, had come to the realization that the memorandums between Ms. Bruner and headquarters on the ADEA charge-statute of limitations problem were damaging to them and all top management of EEOC, including the Commissioners, but especially them as Ms. Bruner's two immediate superiors in that order. (BC#5, 6, 8, 9, 12, 19, 20, 22, 33 and 35)

In a deposition taken by Committee staff August 24, 1988, Ms. Shelton testified that when she received from Ms. Bruner in August of 1987, the copy of Ms. Bruner's memo of March 26, 1987 to her (BC#9 and 22), she discussed the memo with Mr. Troy. She then gave the following answers to the following respective questions:

Q: "And what was done as a result of that memo? Anything, by you or Mr. Troy or both of you?
A: Well, nothing was done as a result of it directly.
Q: Now what subsequent conversations did you have with Ms. Bruner -- that is after August 26th of 1987 -- what subsequent conversations did you have with her with reference to the problem of age cases running or approaching the expiration of the two-year statute under the ADEA?
A: I don't recall any conversations with Ms. Bruner about this problem directly --
Q: I see.
A: --until I think around the first week in November.
Q: Of 1987?
A: Of 1987, right."

Ms. Shelton, Ms. Bruner's immediate superior, did not discuss with her the problem of age cases running the statute of limitations until after she and Mr. Troy had completed the Performance Appraisal and Rating of Ms. Bruner for FY 1987. That Appraisal and Rating was completed October 30, 1987. Ms. Bruner met with Ms. Shelton November 9, 1987 in her headquarters office to discuss the Appraisal and Rating. Ms. Bruner met with Mr. Troy the same day. (BC#39)

Ms. Shelton, Ms. Bruner's Appraising Official as her immediate superior, and Mr. Troy as Ms. Shelton's immediate superior and Ms. Bruner's Reviewing Official must have been close to panic. They must have felt that they were between a rock and a hard place. Suddenly and unexpectedly they had to

deal with the ADEA lapsed charge problem in the Performance Appraisals and Ratings for FY 1987. The word was out. (BC#26)

They knew that districts with lapsed charges included St. Louis; they couldn't let the blame fall on themselves for ignoring Ms. Bruner's memorandums requesting guidance on the ADEA charge-statute of limitations issue. They couldn't attribute the mess to official EEOC policy and practice and thereby put Chairman Thomas "in a negative light."

They resolved their dilemma by putting the blame for lapsed ADEA charges in the St. Louis District solely on Ms. Bruner in her Performance Appraisal and Rating for FY 1987, under the pretext of lack of leadership and poor judgment. This was accomplished by adding the ADEA charge-statute of limitations issue to Element IV (PROVIDE PERSONAL LEADERSHIP) in the SES Agreement for 1987, after the fact. That issue was not mentioned in Element IV, nor any of the other three Elements, in the SES Performance Agreement for FY 1987.

By rating Ms. Bruner "Minimally Satisfactory" on Element IV, they automatically made her overall rating for FY 1987 "Minimally Satisfactory." (BC#37)

To do this they had to ignore the "outstanding" rating for Element IV recommended by Ms. Paula Montanez, the Supervisory Program Analyst in Ms. Shelton's office. (BC#36) The first step in the fiscal year Performance Appraisal and Rating for each District Director is a recommendation from the Program Analyst assigned that District in the regional Director's Office.

In his October 24, 1988 deposition, pages 27 and 28, Mr. Tulio L. Diaz, Program Analyst in the East Region, testified that the Program Analyst in the Regional Director's office is, on a day-to-day basis, the one closest to what is going on in the district office and has more dealings with the District Director than anybody else in headquarters. The St. Louis District Office had been Ms. Montanez' assignment from June through September 1987.

Perhaps naively, as a newcomer in SES, Ms. Bruner went to EEOC Headquarters November 9, 1987, to discuss her FY 1987 bad rating with Ms. Shelton, the appraising official. She soon realized Ms. Shelton's position was fixed. She then went to the SES Reviewing Official, Mr. Troy, the same day.

She must have been encouraged by that meeting. While there she typed out a memorandum to Mr. Troy addressing some of the criticisms in her Rating. (BC#39)

Returning to St. Louis, she discovered that she had with her the copy of the Rating which she inadvertently picked up in Mr. Troy's office. She then returned it to him with a memorandum which referred to their discussion about the 300 day old inventory and the inventory reduction substandards in Element II, her pointing out to him that those two involved conditions beyond her control, and his response to her indicating that her rating as to those two substandards might be changed. They were not changed by either Ms. Shelton or Mr. Troy. (BC#40)

It now appears that Mr. Troy as Reviewing Official could not have given any consideration to Ms. Bruner's attempted response to the Appraisal and Rating. His formal Review approval thereof, without change, is dated October 30, 1987, the same date Ms. Shelton signed as Appraising Official. (BC#37)

Furthermore, Ms. Shelton's rebuttal of Ms. Bruner's response was not made until November 24, 1987, the date of the meeting of the 1987 EEOC SES Performance Review Board (PRB) to review the FY 1987 SES Appraisals and Ratings. (BC#41 and 42)

It would appear that the SES process for the review of Ms. Bruner's Rating by Mr. Troy as the Reviewing Official was, at best, a farce.

That Ms. Bruner was intentionally and unevenhandedly selected by Ms. Shelton and Mr. Troy for criticism and punishment for lapsed ADEA charges becomes even more strikingly obvious when her appraisal on that issue is compared with their appraisal of some other District Directors on the same issue: (1) Chicago - "Highly Effective" Overall Rating and "Outstanding" Element IV Rating even though ADEA charges had lapsed; 137 lapsed charges reported by EEOC and 295 lapsed charge notices mailed pursuant to the Age Discrimination Claims Assistance (ADCA) Act of 1988; (2) Houston-Both Element IV and Overall Ratings "Outstanding" even though ADEA charges lapsed; 69 lapsed charges reported by EEOC and 64 lapsed charge notices under 1988 ADCA Act; (3) Los Angeles - Both Element IV and Overall "Fully Successful," even though "a significant number of ADEA" charges were allowed to lapse; 222 lapsed charges reported by EEOC and 503 lapsed charge notices under 1988 ADCA Act. Compare the St. Louis District Office: 80 lapsed ADEA charges reported by EEOC and 290 lapsed charge notices under the 1988 ADCA Act. (BC#44, 69 and 82)

Ms. Shelton and Mr. Troy accomplished this discrimination against Ms. Bruner by making the lapsed ADEA charge issue, added to Element IV after the fact, a subjective issue. That would enable them to be selective in administering penalties for lapsed charges. In Ms. Bruner's case, they penalized her because they decided that the charges which lapsed in her office lapsed as a result of lack of leadership and poor judgment on her part. The "evidence" of lack of leadership and poor judgment was calling the ADEA charge-statute of limitations problem to the attention of her superiors in headquarters, repeatedly.

There is no evidence that any of the directors who received "Outstanding", "Highly Successful", or "Fully Successful" Ratings for FY 1987 and whose district allowed ADEA charges to lapse, called the ADEA charge-statute of limitations problem to the attention of EEOC headquarters at any time during FY 1987. Evidently that showed leadership and good judgment -- just let the charges lapse; don't bother headquarters with the problem.

The next step in the SES Performance Appraisal and Rating process is the review of each Appraisal and Rating by the EEOC SES Performance Review Board (PRB), all three members of which Board, plus an alternate, are appointed by Chairman Thomas. One of the three appointed by Chairman Thomas is designated by him as PRB Chairman and is an EEOC Senior Executive.

The PRB for FY 1987 were William Ng (EEOC Deputy General Counsel), Chairman, Allan Heuerman of the Office of Personnel Management and Ms. Harriet G. Jenkins of the National Aeronautics and Space Administration. (BC#41)

The FY 1987 EEOC SES PRB met November 24, 1987 and reviewed the Ratings of all EEOC SES personnel in that one day. The PRB made "Comments" under the Heading of "Justification" in Ms. Bruner's rating form as follows: "The PRB concurred with the Summary rating, but noted that the fully successful rating

awarded to Bruner under Job Element II appeared to be inconsistent with the ratings given to other individuals."

In depositions taken by Committee staff on August 29, 1988, and September 28, 1988, respectively, PRB members Heuerman and Jenkins testified that they did not know the names of the "other individuals" referred to in that "comment" with whose Element II rating Ms. Bruner's Element II rating "appeared to be inconsistent." Neither of them could describe the basis of the "apparent inconsistency."

By deposition taken by Committee staff on September 14, 1988, PRB Chairman Ng testified that the above comment was in his handwriting and that the "other individuals" were two: the Memphis District Director, and the Baltimore District Director, that initially his handwritten comment included the two names, but later the individual names were crossed out and replaced with the words, "other individuals."

Similar handwritten comments were made on the other two directors' rating forms. Mr. Ng testified that the basis of the "comment" was that, although the narratives as to Element II were similar for each of the three, Ms. Bruner's rating on that Element was "fully successful" and the other two were each "minimally satisfactory."

Mr. Ng also testified that the Board decided not to make any recommendation to Chairman Thomas with reference to the "inconsistency," but to merely note the "inconsistency" for Chairman Thomas' consideration, conjecturing that Ms. Bruner's rating on that Element could be lowered to "minimally satisfactory" without affecting her summary rating of "minimally satisfactory" and that the rating of the other two directors on that Element could be raised, thereby raising the summary rating for each from "minimally satisfactory" to "fully successful."

Depositions of the three FY 1987 PRB members reveal that the issue of ADEA charges lapsing under ADEA statutes of limitations was not raised nor discussed at the 1987 meeting. That must be the reason that the PRB did not detect the "inconsistency" in Ms. Bruner's rating under Element IV when compared with the ratings of other director's under Element IV, such as the Chicago Director, the Houston Director and the Los Angeles Director mentioned above. The initial appraisal of each of those three was also made by Ms. Shelton.

Significantly, the PRB also missed the "inconsistency" in Ms. Bruner's "Minimally Satisfactory" rating under Element IV and that of the other two directors involved in the cited "inconsistency" under Element II. In both of those other two districts ADEA charges had been allowed to lapse under the ADEA statutes of limitations. The narrative as to one cited 126 lapsed charges; EEOC reported 175 lapsed charges and 289 lapsed charge mailed notices. Yet that director's rating under Element IV was "Highly Effective." As to the other of the two districts the EEOC reported 65 lapsed charges and 112 lapsed charge mailed notices. Yet that director's rating under Element IV was "Fully Successful."

The initial appraisal of each of those other two was made by Mr. Schmelzer.

Depositions of the three FY 1987 PRB members raise serious question about just which documents were included in the Performance Appraisal and Rating Record of Ms. Bruner submitted to the PRB for the purposes of their review.

PRB Member Jenkins testified that it was her practice to make note of objections by the person being rated and whether the rating official (in this case Ms. Shelton) successfully rebutted those objections, and that she did not remember that the documents included any objection by Ms. Bruner.

Ms. Jenkins also testified that she did not recall seeing the November 9, 1987 memo from Ms. Bruner to Mr. Troy and Ms. Shelton (BC#39), nor the November 16, 1987 memo from Ms. Bruner to Mr. Troy (BC#40) nor the November 24, 1987 memo from Ms. Shelton to Ms. Bruner. (BC#42)

PRB Member Heuerman testified that he did not recall that Ms. Bruner's record submitted for review included any response by Ms. Bruner to the criticisms in her Appraisal.

PRB Chairman Ng testified that the October 21, 1987 memo to Mr. Troy through Ms. Shelton from Ms. Bruner (BC#35), the FY 1987 Performance Element narratives and recommended Ratings of Ms. Bruner prepared by Program Analyst Ms. Paula Montanez (BC#36) and Ms. Bruner's memo of November 16, 1987 to Mr. Troy with reference to Ms. Bruner's FY 1987 Appraisal (BC#40) were not included in the documents provided to the PRB for the purposes of their review of Ms. Bruner's Appraisal and Rating for FY 1987.

Perhaps it could be argued, on a purely technical basis, that Official SES Procedures did not require that BC#35 and 36 be submitted to the PRB, but clearly BC#40 should have been included as part of Ms. Bruner's response to criticisms in her Appraisal.

Also it is passing strange that the PRB detected no difference, except in the level of the appraisal rating, in the Element II of the Baltimore, Memphis and St. Louis Districts. One major difference missed by the PRB was that both the Baltimore Director and the St. Louis Director indicated on the face of the form, by signature, that they intended to comment on the Appraisal, and both did as to aspects of Element II. The third District Director, Memphis, indicated no comment would be made.

This also makes one wonder whether each Director's comments were submitted to the PRB for the purposes of their review. If the comments as to Element II were taken into consideration, there would be no similarity between Baltimore and Memphis and no similarity between St. Louis and Memphis and no similarity in comments as to Element II between St. Louis and Baltimore.

This aspect of the SES Appraisal Review system is very unfair to the Senior Executives whose Appraisals are being reviewed. The information given to them upon completion of the review does not include information as to whether the documents considered by the PRB included their response. The PRB members themselves don't keep any records or copies and the PRB does not make any notation on any of the documents considered to certify that they were considered by the PRB. There is no way to verify just what documents were submitted to, and considered by, the PRB as to any Senior Executive whose Appraisal was reviewed by it.

Under EEOC SES Performance Appraisal Review procedures the actions and recommendations of the PRB then went to EEOC Chairman Thomas for his review.

Chairman Thomas saw the possible "inconsistency" in the Element II level of rating of the Baltimore, Memphis and St. Louis District Directors, noted by the PRB, as an opportunity to add to Ms. Bruner's punishment and took advantage of that opportunity. He lowered her Element II rating from "Fully Successful" to "Minimally Satisfactory" on the basis of the "inconsistency" noted by the PRB. (BC#41 and 44)

In doing so he did not indicate that he considered, or was even aware of, Ms. Bruner's response to the criticisms in Element II.

By some kind of logic which is, at best, elusive, he used that noted possible "inconsistency" as the basis for reducing the SES level of pay one step for both the Baltimore and Memphis Directors. (BC#44)

Other significant actions by Chairman Thomas on the District Directors FY 1987 Appraisals and Rating included the following:

(1) Concurred in a "Highly Effective" Summary Rating and a $4,000 bonus award (recommended by the PRB) for the Chicago District Director. The rating by Ms. Shelton on Element II states: "Performance under the four objectives overall would have been minimally satisfactory; however, in consideration of performance under the goals the office set for itself, which were in large measure consistent with agency objectives, this element is rated at the fully successful level." Comments on Element IV included: "The two year statute of limitations expired for several ADEA charges in the pending inventory by the end of the year. The office's case management system includes a report that provides six months advance notice prior to expiration of the two year statute of limitations." Element IV was rated at the "outstanding" level in spite of lapsed ADEA charges that fiscal year. EEOC reported 137 lapsed ADEA charges and 295 lapsed ADEA charge notices under the ADCA Act of 1988 for the Chicago office.

[NOTE: Ms. Bruner's St. Louis office also maintained a policy of advance notice of expiration of the statute of limitations, but that was not mentioned by Ms. Shelton in her comments as to Element IV in Ms. Bruner's FY 1987 Rating.]

(2) Concurred in an Outstanding Summary Rating, outstanding Element IV rating and $7,000 bonus (recommended by the PRB) for the Houston District Director, even though that office had allowed ADEA cases to expire under the ADEA statutes of limitations.

(3) Concurred in a Highly Effective Summary Rating, Outstanding Element IV rating, and $5,000 bonus (recommended by the PRB) for the Cleveland District Director, even though that office had allowed ADEA charges to expire under the statutes of limitations.

(4) Concurred in an Outstanding Summary Rating, an Outstanding Element IV rating, and a $7,500 bonus (recommended by the PRB) for the New Orleans District Director, even though ADEA charges were allowed to expire under the statute of limitations. The

Appraising Official's comment about outlawed ADEA charges in Element IV was: "During the rating period a Congressional Committee requested from EEOC how many age charges each field office had in its inventory where the two year statute of limitations period had expired. Field Management found that because of the manager's strong oversight, the number was less than 1% in her office."

(5) Concurred in an Outstanding Summary Rating, and an Outstanding rating for Element IV, and increased bonus award to $7,000 (PRB recommended $6,000) for the San Francisco District Director. Ms. Shelton's comment on Element IV includes the following: "The District has been very responsive in ensuring that no person filing a charge under the Age Discrimination in Employment Act loses their rights under the statute because the charge was maintained beyond the statute of limitations."

EEOC reported that under the ADCA Act of 1988, written notice was given for 264 lapsed ADEA charges of the San Francisco District Office.

(6) Concurred in Highly Effective Summary Rating and Highly Effective Element IV rating, and increased SES pay level to ES-4 (contrary to recommendation of PRB) for the Atlanta District Director. The comment as to Element IV indicated that within 45 minutes of the 9/9/87 headquarters telephone request for the number of ADEA charges which had expired under the statute of limitations, that District Director responded that the number was zero. (The request was made because of the data request from this Committee.)

EEOC reported that under the ADCA Act of 1988, written notice was given for 66 outlawed ADEA charges of the Atlanta District Office.

(7) Concurred in an Element IV Fully Successful rating and a Highly Effective Summary Rating for New York District Director even though the comment on Element IV indicated the office allowed 112 ADEA charges to lapse under the statute of limitations.

EEOC reported 150 lapsed ADEA charges and 926 lapsed ADEA charge notices under the 1988 ADEA Act for the New York District Office.

(8) Concurred in a Fully Successful Element IV rating and a Fully Successful Summary Rating for the Los Angeles Acting District Director, even though (under Element IV) "a significant number of ADEA cases were not completed by the district prior to the expiration of the statute of limitations.... This is a very serious situation, the gravity of which can not be overstated. The Director did, however, take action to correct this situation and to ensure that it does not recur."

EEOC reported 222 lapsed ADEA charges and 503 lapsed ADEA charge notices under the 1988 ADCA Act for the Los Angeles District Office.

(9) Concurred in a Fully Successful Element IV rating and a Highly Effective Summary Rating for the Milwaukee District Office Director, even though (under Element

IV) "The investigation of a number of ADEA cases was not completed by the district prior to the expiration of the statute of limitations. The Director must give closer attention to the management of cases to ensure that this serious problem is not a recurring one."

EEOC reported 16 lapsed ADEA charges and 450 ADEA lapsed charge notices under the 1988 ADCA Act for the Milwaukee District Office. (BC#44)

As part of an obvious move to try to protect himself and his administration of the EEOC, Chairman Thomas sent a memo to all EEOC field offices, December 21, 1987, to advise them that "a number of ADEA cases last year...was allowed to expire without justification. I find this disgraceful and absolutely inexcusable....a dereliction of duties...I will not tolerate such mishandling of even one case." (Emphasis supplied) (BC#46)

No doubt the above memo to the field offices was part of the scenario purposefully orchestrated by Chairman Thomas for his going public and to the press with the lapsed charge story before the data was belatedly provided to this Committee.

Significantly, neither Chairman Thomas' December 21 memo nor his public statements mentioned the change in official policy which was implemented by the October 1, 1987 amendment of the Compliance Manual requiring the policing of the ADEA statutes of limitations in ADEA charge processing. (BC#30)

Of course, Chairman Thomas' real purpose in being the first to give the lapsed charge story to the press, before giving the data to the Committee, was to give him the opportunity to immediately downplay the lapsed charge problem as not Commission-wide, as limited to only "about 900 ADEA charges and only a half dozen district directors", and to exonerate himself and his administration of the EEOC and the official policies and practices of his administration. (BC#48, 49, 50, and 59)

He wanted to present the story in such a way as to indicate that allowing such charges to lapse was contrary to established EEOC policies and was not a practice condoned by EEOC Headquarters.

He embellished this latter effort by strongly implying that certain "district directors were not putting information into the central data system." The implication of that embellishment was that EEOC Headquarters used the central data system to keep track of ADEA charges and that if the information had not been kept out of the system, EEOC Headquarters would have caught the problem before the damage was done and prevented it. (BC#48, 49, 50 and 59)

Later, Chairman Thomas said publicly that the St. Louis District Office was the office withholding ADEA charge data from the central data system, that this information was given to him by the New Orleans District Director, and that he had ordered an audit to determine if that was true.

A St. Louis Post-Dispatch reporter picked up the fact that Chairman Thomas, in the interview published in the Los Angeles Times, named the St. Louis District Office as one of the guilty districts. Quite naturally, that St. Louis Post-Dispatch reporter put Ms. Bruner on the spot to respond to the charges against her and her St. Louis District Office made publicly by Chairman Thomas. That's news in St. Louis. (BC#51)

The Post-Dispatch article indicates the reporter called Ms. Bruner "Friday night," therefore, at home, after work. (BC#51)

Naturally, this Committee's investigators followed up on the stories in the press because they contained data and information which had not been given to the Committee, though requested. Chairman Thomas did not reveal the number of lapsed ADEA charges to be 900 until his letter of January 25, 1988 to Chairman Melcher. (BC#48, 49, 50, 51 and 56)

The first call to Ms. Bruner was made January 11, the day after the January 10, 1988, St. Louis Post-Dispatch article. Five more calls were necessary before Ms. Bruner would return the call. Then she informed the Committee investigator that she would have to "clear it with headquarters" before discussing the matter with him. Ms. Bruner called headquarters the same day. (BC#52 and 53)

Ms. Bruner exhibited her professionalism and her EEOC team commitment in refusing to give any information to the Committee unless and until EEOC headquarters gave her written authorization to do so. (BC#52, 53, 54, 57, 60, 61 and 64)

The memorandums between Ms. Bruner and headquarters officials clearly documented the factual accuracy and honesty of her response to the Post-Dispatch reporter's question. In addition, they were part of the avalanche of documents, data and information which exposed inaccuracies in the lapsed charge story given to the public and the press by Chairman Thomas. (BC#4, 5, 6, 8, 9, 12, 13, 14, 19, 21, 22, 23, 33, and 35)

The inaccuracies in the lapsed ADEA charge story told by Chairman Thomas in December 1987 and early 1988, and subsequent revelations exposed the mismanagement on the part of Chairman Thomas and his top administrators in allowing thousands of age discrimination victims to lose their rights under ADEA statutes of limitations:

(1) The EEOC lapsed ADEA charge problem was, in fact, Commission-wide, involved all district offices, not just a "half dozen" or eight and affected thousands of age discrimination victims, not just 900.

Chairman Thomas' January 25, 1988 letter to Chairman Melcher said the 900 lapsed charges were "primarily located in eight of the district offices" and asserted that "certain appropriate information was being intentionally withheld." (BC#56)

By EEOC letter of March 30, 1988, Chairman Melcher was informed that the number was 1200 in FY 1987 and 1608 through the first quarter of FY 1988, involving all district offices except San Francisco and only one charge in the Atlanta District office. (BC#69)

EEOC reported June 17, 1988 that it had given to 7,546 age discrimination claimants, whose ADEA rights were revived by the 1988 ADCA Act, the notice required by that Act and that those affected ADEA charges involved all 23 district offices. That total did not include ADEA charges being handled by local agencies under contract with EEOC. (BC#82)

EEOC admitted in its November 2, 1988 Report, pursuant to the 1988 ADCA Act, that as of October 3, 1988, EEOC did not yet know the number of age discrimination

victims who had lost their rights before April 8, 1988, and whose rights would be revived by the 1988 ADCA Act. Notices given to ADEA claimants pursuant to the 1988 ADCA Act totaled 10,476. That total includes ADEA charges being handled by local agencies under contract with EEOC. EEOC "estimates" as of October 3, 1988 that as many as 8,876 age discrimination victims may have lost their ADEA rights during the period covered by the ADCA Act of 1988. (BC#104)

In his September 14, 1988 deposition, page 32, EEOC Deputy General Counsel William Ng, admitted that the lapsed ADEA charge situation was an "endemic problem."

The November 17, 1988 Report to Chairman Thomas from Mr. Troy, transmitted to Chairman Melcher by Chairman Thomas' letter of November 18, reveals that between April 8, 1988 and September 30, 1988, the end of fiscal year 1988, 436 ADEA charges were allowed to lapse under the two-year statute of limitations, some in each of the 23 district offices, an average of 3.5 charges per business day during that period. (BC#107)

That report tells 241 of those 436 age discrimination victims who lost their rights under ADEA that the reasons for their losing their rights were "acceptable reasons."

It tells 119 of the remaining 195 victims that they lost their rights because the EEOC district office processing their charge (a total of five district offices) did not have "stable managerial leadership for much of FY'88." That will be comforting news to those 119 victims of those five offices: Baltimore, Birmingham, Detroit, Dallas, and Seattle.

The remaining 76 of those 436 victims will be pleased and relieved to learn that they lost their rights for "unacceptable reasons" other than unstable managerial leadership.

According to that report, only six district offices, with charges lapsing for "acceptable reasons" had no charges lapse for "unacceptable reasons": Atlanta, Charlotte, Cleveland, Memphis, New Orleans and San Francisco.

It is interesting to note that of those six district offices, four -- Atlanta, Cleveland, New Orleans and San Francisco -- received either a "Highly Effective" or "Outstanding" Performance Rating for FY 1987, concurred in by Chairman Thomas, even though charges in the office had lapsed. Also, three of those four each received a cash bonus for FY 1987 and one received an increase in SES pay level upon Chairman Thomas' order (contrary to the recommendations of the PRB). (BC#44 and 107)

(2) Chairman Thomas' public accusation that the St. Louis District Office intentionally withheld ADEA charge information from the EEOC central data system was without factual foundation.

In a deposition taken by Committee staff June 13, 1988, Mr. Bennett, who was Regional Director for the St. Louis District and Kansas City Area Offices from the

fall of 1983 until March 1987, testified: "...the whole time I was at EEOC there was a problem in staffing at Kansas City, and it just continually got worse as time went on.... But the real problem in Kansas City was not reassigning cases. That would only be a stopgap measure. The real problem there is that they were just seriously understaffed, in light of the fact that there were some other offices that were seriously overstaffed, like other offices that were seriously overstaffed, like Detroit, for example, or Milwaukee...They (Kansas City) just didn't have the staff to process them (age charges) timely.... It (Kansas City) was seriously understaffed."

The memorandums between Ms. Bruner and EEOC headquarters clearly and forcefully document Ms. Bruner's conscientiousness and diligence in her determination and efforts to straighten out the mess in the St. Louis District office (and its Kansas City Area Office) which she took over August 3, 1986. (BC#5, 6, 8, 9, 12, 13, 14, 19, 21, 22, 23, 32, 33, 34 and 35)

Ms. Bruner's very first memo (September 16, 1986) to Mr. Bennett, her Regional Director superior official in EEOC headquarters, emphasized the ADEA charge-statute of limitations problem in the St. Louis and Kansas City offices. In addition, that 15 page memo detailed her plans and suggestions for dealing with the problems in those offices. Mr. Bennett testified that that memo was taken up by him with Mr. Troy. (BC #5)

The next two memos brought the problems directly to the attention of Mr. Troy. (BC#6 and 8)

Ms. Bruner's March 26, 1987 memo to the new Regional Director in headquarters, Ms. Shelton, who succeeded Mr. Bennett, was a follow-up to her memo of September 16, 1986 to Mr. Bennett and indicates her understanding that some agreement had been reached between Mr. Bennett and Mr. Troy as a result of her memo of September 16, 1986 to Mr. Bennett. (BC#9)

Neither Ms. Shelton nor Mr. Troy responded to any of Ms. Bruner's memos, even after the March 26, 1987 memo was re-submitted to Ms. Shelton on August 28, 1987 at her request. (BC#22)

In a deposition taken by Committee staff August 24, 1988, Ms. Shelton testified that she discussed the March 26, 1987 memo with Mr. Troy after she received the copy in August 1987 that nothing was done as a result of the memo by either her or Mr. Troy and that she did not discuss the age charge-statute of limitations problem with Ms. Bruner until November 1987. (See, page 2 supra)

In the face of that memo record, what would Ms. Bruner have to gain by keeping out of the central data system information about ADEA charges lapsing under the ADEA statutes of limitations?

What's more, the EEOC central data system was not a usable or reliable source of data as to charges for which EEOC was responsible.

At the January 28, 1988 Hearing by the House of Representatives Select Committee on Aging on the subject of Age Discrimination, Mr. Burton D. Fretz, Executive Director, National Senior Citizens Law Center, testified as follows in response to a question from the Committee Chairman:

> "...my understanding is that the Commission does have programmed a combined data system in computers which lists all charges filed with the Commission under the Act by date and other relevant information. While I certainly don't advertise myself as a computer expert, it is a relatively easy matter to pull those cases on a regular basis that are approaching a deadline such as the statute of limitations. In such a way those individuals can be advised that their time is running out and that they should contact a private attorney and make arrangements to protect their rights. All these things can be done easily and with a minimum expense...." (House of Representatives Select Committee on Aging, January 28, 1988 Hearing on "AGE DISCRIMINATION: QUALITY OF ENFORCEMENT", Committee Publication No. 100-656, page 68)

In response to Mr. Fretz' testimony, Chairman Thomas testified as follows at page 71-72: "The data system that he is talking about is the one that I put in place personally, and it is not up and running yet. And it does not have the capability yet that he is talking about, although it is planned to have that capability."

On page 92 of that Hearing Print, Congressman William J. Hughes asked Chairman Thomas the following question: "Didn't you previously track the dates of filings for statute of limitations purposes?" Chairman Thomas' answer on the same page: "Those numbers were not tracked."

Mr. Troy's January 22, 1988 memorandum to all District, Area and Local Directors instructing them to provide headquarters with data as to charges pending as of January 29, 1988, contains the following admission that EEOC headquarters had no reliable central data system: "It is expected that you will use your local ADP data bases for accurate listings that we are, thus far, unable to obtain from the national CDS database." (BC#55)

So, the implication in Chairman Thomas' public statements that the ADEA charge-statute of limitations problem would have been caught by headquarters if data had not been withheld was completely without foundation, just a smoke screen.

No better was the basis for his accusation that the St. Louis District Office was guilty of withholding data. He said that the New Orleans District Director gave him the information. In a telephone conversation with the Committee Investigator, the New Orleans District Director denied making that assertion to Chairman Thomas.

In her August 24, 1988, deposition Ms. Shelton was asked the following question on page 35: "Have you ever had any reason to believe that data was being withheld

from the system in the St. Louis office?" Her answer on the same page: "I did not have reason to believe data was necessarily being withheld, but I did have some concern about whether or not the information was being put into the system timely, information on cases generally, in the Kansas City Area Office particularly."

On page 36, she was asked: "Was there ever any investigation of that, any audit made of it or any check made to determine whether data was being withheld by the St. Louis office or the Kansas City office?" Her answer, on the same page: "Well, I was satisfied, as Ms. Bruner's superior,...after doing some investigation,...that it was not a problem that was in St. Louis' control, but rather a problem that was in the system itself."

On that same page, Ms. Shelton went on to testify that: "But as it relates to St. Louis itself, the system during this fiscal year was having a tremendous number of problems...."

A Quality Review of the St. Louis District and Kansas City Area Offices conducted by Field Management Programs-West under the direction of Ms. Shelton as Regional Director, revealed no evidence of information withholding by either office. The field work for the Review was completed March 4, 1988 but the Review Report was not provided to Ms. Bruner until October 26, 1988. (BC#66 and 102)

Before going public with the accusation against the St. Louis Office Director and staff, why didn't Chairman Thomas first make inquiry of Ms. Bruner or Ms. Shelton or Mr. Troy? In her August 24, 1988 deposition, page 37, Ms. Shelton was asked whether she and Chairman Thomas ever discussed "the question of data withholding from the system in the St. Louis Office." Her answer, same page, was: "we have not."

Didn't Chairman Thomas have some managerial ethical responsibility to check the facts with Ms. Bruner or one of her immediate superiors before going public with the accusation?

Giving Chairman Thomas the benefit of the doubt, it must be that he misunderstood the information given to him by the New Orleans District Director. Checking out the information before going public with the accusation would have saved him from the embarrassment of a false public accusation.

In the circumstances, shouldn't Chairman Thomas feel constrained to publicly apologize to Ms. Bruner and the staff and employees in the St. Louis District Office and the Kansas City Area Office?

(3) EEOC official policies and condoned practices, prior to October 1, 1987, did not require or involve tracking ADEA charges in relation to the ADEA statutes of limitations.

If that were not true,

(a) it would not have been necessary to amend the EEOC Official Compliance Manual October 1, 1987 to add a

requirement of priority handling of ADEA charges "where the two year statute of limitations is near to expiring." (BC#30)

(b) it would not have been necessary for Mr. Troy to send to all District, Area and Local Directors his memorandum of January 22, 1988, instructing them to abandon "processing in docket order" as "the hallmark" of their case management systems for "ADEA charges that are nearing statute expiration", and to process such ADEA charges "on a priority basis...that is without 'docket order' consideration." (BC #55)

(c) it would not have been necessary to change the SES Agreement for FY 1988 by making the ADEA charge-statute of limitations issue a substandard in the Agreement, for the first time, effective October 1, 1987. That issue would have been a substandard in the SES Agreement years earlier.

(d) ADEA charges would not have lapsed in each and every one of the 23 EEOC District Offices.

(e) Chairman Thomas' memorandum of December 21, 1987 would not have had to be sent to <u>all</u> EEOC Field Offices, warning them: "I will not tolerate such mishandling of even one case." His public statements put the blame on only a "half dozen" or seven district offices. (BC#64)

(f) Ms. Shelton and/or Mr. Troy would have been able to respond to Ms. Bruner's memos about the ADEA charge-statute of limitations problem and would not have had to wait to deal with the issue until the policy was changed October 1, 1987. Their first response to her memos was in the narrative in their Appraisal and Rating of her Performance for FY 1987, dated October 30, 1987, criticizing her on that issue and using that criticism as a basis for a low Rating for her for that fiscal year. (BC#37) (See, page 2, supra.)

At this Committee's June 23, 1988 Hearing, Mr. Levi Morrow, Senior Investigator in the EEOC Dallas District Office, testified as follows:

"Prior to the situation coming out with the chairman bringing up about the 900 cases, I can truthfully say no one really looked at, cared, or really seemed concerned about whether or not an age charge was nearing its two-year statute. The only thing was the bottom line which was close cases. Close as many cases as you can. That was the bottom line."

At this Committee's June 23, 1988 Hearing, Ms. Bruner testified: "Well, I had been with the Commission for quite a long time, and we have never prioritized one statute over another.... There was nothing in our practice or procedure which said that we should prioritize one statute over another."

Ms. Bruner had been with the Commission since July 1971. She started as an Investigator (GS-9) and over the years was promoted in GS steps and positions, becoming a Supervisory Equal Opportunity Specialist (GS-14) in 1979, then a Deputy District Director (GS-15) in 1982, before becoming St. Louis District Director in 1986. In 1985,

she was awarded a Job Performance cash bonus, in 1986, a Special Outstanding Performance Commendation. (BC#4)

At the March 29, 1988 Hearing of the Subcommittee on Employment and Housing of the House of Representatives Committee on Government Operations on "EEOC DELAYS IN PROCESSING AGE DISCRIMINATION CHARGES", Congressman Christopher Shays asked Chairman Thomas about his attitude toward the ADEA statute of limitations. Chairman Thomas gave the following response:

> "With the statute of limitations per se, I really don't have a problem. What I do have, and something that is going to be of concern is the fact that that statute of limitations is going to require us to put priority on the age cases over the race cases, over the Federal sector involving handicap cases, over national origin cases, etcetera. The statute of limitations itself forces prioritizing." (Emphasis supplied)
>
> EEOC DELAYS IN PROCESSING AGE DISCRIMINATION CHARGES. HEARING Before a Subcommittee of the Committee on Government Operations, House of Representatives, One Hundredth Congress, Second Session, March 29, 1988, page 48 and 49.

Ms. Polly M. Mead is Director, EEOC Office of Performance Services. As such, she is in charge of the EEOC Quality Assurance Program for the district offices, quality of work and quality of product.

In her September 12, 1988 deposition, Ms. Mead testified: "We analyze systems, processes and procedures to identify improvements that will lead to permanent increases in overall quality production....Quality Assurance is a poor name for this program. It really should be called Total Quality Management....One is the management of the work itself, the improvement of quality and efficiency through a systematic approach; and the other half of that is what we call the leadership of the people."

Significantly, district office assessment topics considered by Ms. Mead's office and Mr. Troy's Office of Program Operations in determining which district offices needed help from Ms. Mead's office included such "Performance Data" as "pending inventory", "closures per staff", "300 day old cases (270)", "cause rate" and "PM's recommended-approved", but it did not include ADEA charges which lapsed under the ADEA statutes of limitations. (Deposition Exhibit No. 2 in Ms. Mead's September 12, 1988 Deposition).

Obviously, the ADEA statutes of limitations were not addressed in official EEOC policy and practice, nor in the EEOC Official Quality Assurance Program.

(4) The EEOC did not have in place and functioning an effective hands-on management supervision and control policy at the Commission Member level.

When he was asked at this Committee's June 24, 1988 Hearing whether he had been advised of memos from district offices, "asking for instructions on just what to do about aging cases that had run the statute of limitations or were about to run the statute of limitations", Chairman Thomas' answer was: "I was not."

Later he added: "With respect to age charges, I perhaps should have been notified. I was not, but that certainly won't be the case in the future."

Mr. Bennett was EEOC Region II Regional Director in headquarters from the fall of 1983 until retiring in March 1987. During that period there were three Regions, each with a Regional Director.

In a deposition taken by Committee staff June 13, 1988, Mr. Bennett was asked whether it was possible that the 1986 and early 1987 warnings to headquarters about age charges running the statute of limitations did not reach Chairman Thomas at the time. His answer, page 21: "It's hard to believe, but I think it is possible. For example, the regional directors never met with him, so I don't know what he knew or didn't know, and the only thing we ever got back was indirectly, usually through Jim Troy. I don't remember Troy ever saying specifically that he had talked to Thomas about the age problem." Mr. Bennett's testimony made it clear that it was not Chairman Thomas' management policy to meet with the regional directors, even occasionally.

In a deposition taken by Committee staff August 24, 1988, Ms. Shelton was asked whether Chairman Thomas met with the Director, Field Management Programs-East and her as Director, Field Management Programs-West. Her answer, pages 9 and 10: "...in the early part of 1988 the Chairman began to hold meetings directly with the other Field Management Program Director for the East and myself,....just to be brought up to date on matters of interest.... They were rather short-lived. They lasted for a couple of months. We were supposed to meet on a weekly basis but with the Chairman's schedule, most of the meetings had to be cancelled, and in fact, we might have held two to three meetings... But in fact I have not attended a meeting with the Chairman in conjunction with that since... before March of this year." (Emphasis supplied)

Without an effective hands-on management policy at the Commission Member level, the Chairman and the other Members of the Commission could not, and did not, stay abreast of field activities or problems developing in the field.

The failure of Chairman Thomas to stay abreast of activities and developments in the field resulted in the inaccuracies in his public statements about the lapsed ADEA charge problem. Those inaccuracies were exposed by Ms. Bruner's documents and the avalanche of documents and information started by her documents.

Those Bruner documents and the avalanche of documents and information which the Bruner documents caused also exposed mismanagement at the Commission Member level in their failure to have in place at their level an effective hands-on management policy of supervision and control.

EEOC Headquarters officials engaged in acts of intimidation, criticism and harassment against District Director, Lynn Y. Bruner, as a prospective witness before this Committee and acts of retaliation against her for her testimony before this Committee.

(1) This Committee's subpoena for appearance and testimony at this Committee's June 23, 1988 Hearing was served on Ms. Bruner June 14, 1988 in St. Louis, Missouri by the United States Marshall's Service. (BC#80)

Before that day was over Ms. Bruner received a telephone call from Mr. Troy's EEOC Office of Program Operations inquiring whether a subpoena had been served on her and instructing her to fax a copy of the subpoena to Mr. Troy's office in EEOC headquarters. That she did.

To attend the June 23 Hearing it was necessary for Ms. Bruner to leave St. Louis, Wednesday, June 22nd.

Tuesday, June 21, at work, Ms. Bruner received two telephone calls from the office of her immediate superior, Ms. Shelton. The first call was shortly before 1:00 PM from a Program Analyst in Ms. Shelton's office informing her that Ms. Shelton would be faxing to her about 5 PM, St. Louis time, that day a copy of her Performance Review for the first half of fiscal year 1988, which ended March 31, 1988, and telling her to be sure to stay at her office to receive that fax that day.

The second call that day was from another Program Analyst in Ms. Shelton's office about 5 PM, St. Louis time, telling Ms. Bruner that a copy of her mid-fiscal year 1988 Review would be faxed to her by Ms. Shelton about 6 PM, St. Louis time, and alerting her to stay in her office until she received that fax. (BC#83)

A Review copy was faxed to Ms. Bruner about 6 PM, St. Louis time, that day. The Review was entirely negative and critical. (BC#82) The original of the Review was sent by DHL Delivery Service from headquarters to Ms. Bruner. (BC#83)

Ms. Shelton downgraded Ms. Bruner because of her response to the reporter's question as quoted in the news story, not because of the lack of truth in her response, but because the article did, in the words of Ms. Shelton, "present the Chairman in a negative light." (BC#51 and 83)

Ms. Shelton also criticized Ms. Bruner for not telling Ms. Shelton or Mr. Troy either before or after responding to the reporter's question. Of course, to expect her to call in before borders on the ridiculous. (BC#82) It was Chairman Thomas who criticized her officially and publicly, not either one of them.

The obvious purpose of the timing of the faxing of a copy of the Review to Ms. Bruner was to harass and intimidate her just before she was to appear before this Committee. A great majority of the 23 district directors received their mid-fiscal year 1988 Review from EEOC headquarters either before or after June 21.

(2) Chairman Thomas appeared as a witness at the June 24 Committee Hearing, accompanied by Mr. Troy. Both took

advantage of the opportunity to give testimony critical of Ms. Bruner as the St. Louis District Office Director, the very next day after she testified.

Chairman Thomas stuck to the text of the ADEA charge "data withholding" story he had been telling since December 1987. Of course, Mr. Troy's testimony supported that of Chairman Thomas.

In her testimony the previous day, Ms. Bruner verified the memorandums between her and EEOC headquarters officials, dating back to September 1986, with reference to the ADEA charge-statute of limitations problem and the lack of a headquarters response to any of those memorandums prior to her Performance Appraisal and Rating of October 30, 1987 for fiscal year 1987.

In her sworn testimony, Ms. Bruner stated: "Well, I had been with the Commission for quite a long time, and we have never prioritized one statute over another.... There was nothing in our practice or procedure which said that we should prioritize one statute over another."

Significantly, neither Chairman Thomas nor Mr. Troy made any assertion, in their testimony, that EEOC official policy included any reference to the ADEA charge-statute of limitations issue. Neither produced any documentation of any EEOC policy which addressed or recognized the ADEA statutes of limitations.

Significantly also, neither Chairman Thomas nor Mr. Troy produced any documentation or other proof of "data withholding" by the St. Louis office. In January 1988, Chairman Thomas said that he had ordered an audit of the St. Louis office to see if data was being withheld. There is no record that such an audit was ordered or made. All audits and Reviews of the St. Louis office in 1988 produced no evidence of data withholding. Ms. Bruner, her managers and staff, all deny any withholding of data.

Isn't it strange that during that five to six months in 1988, Chairman Thomas did not see fit to pursue the "data withholding" issue with Ms. Bruner's immediate superior, Ms. Shelton. In her August 24, 1988 deposition, page 37, Ms. Shelton testified that she and Chairman Thomas had not discussed the issue. (See, page 14 supra).

If he had, he would have found out that Ms. Shelton "did not have reason to believe that data was necessarily being withheld." (See, page 13 supra).

Also, he would have learned that Ms. Shelton's Quality Review of both the St. Louis Office and its Kansas City Area Office, the field work for which was completed March 4, 1988, revealed no evidence of "data withholding" in either office. (BC#66 and 102)

That unsubstantiated accusation against Ms. Bruner in the June 24 testimony of Chairman Thomas and Mr. Troy was blatant retaliation against Ms. Bruner, blatant harassment and intimidation.

(3) June 27, 1988, Ms. Bruner's first day back at her office following her June 23 testimony before this Committee, Ms. Bruner was paid an official visit by Ms. Polly M.

Mead as Director, EEOC Office of Performance Services. In that position in EEOC headquarters, Ms. Mead reported directly to Chairman Thomas.

Ms. Mead informed Ms. Bruner that she had monitored the June 23 and 24 Hearings of this Committee. She must have had at least tacit approval from Chairman Thomas.

Ms. Bruner reports that Ms. Mead told her, over and over again and with persistence, that her testimony before the Committee made her appear to be a weak director; that, in testifying before the Committee, she was being used by the Committee; that others in headquarters also felt that her testimony made her appear weak; that Ms. Shelton had Ms. Sharon Miller of her office monitor the Hearing and that Ms. Miller would be giving a report to Ms. Shelton; that as a result of her testimony, she was "in trouble" and in danger of not being around much longer.

In her September 12, 1988 deposition, taken by Committee staff, Ms. Mead gave the following respective answers to the following respective questions:

Q. "...Ms. Bruner feels that the things you said to her at that meeting on the 27th of June were very upsetting to her, in telling her that she was a weak, appeared in her testimony to be a weak director. Did you tell her that?"
A. "I told her it was my perception from her testimony."
Q. "But, I mean, what was your purpose in telling her that?"
A. "My purpose was to help Lynn.... One of them was my own personal perception of how people, including Ms. Shelton, could interpret that she was not a pro-active -- I prefer that to the word 'weak' -- Director of the St. Louis Office. I described not Ms. Shelton's response to the testimony but my own. After I had done that, I said, 'Lynn, if I have that perception, I can imagine that others would, too'."
Q. "Well, she claims that you told her at that meeting that she was in trouble at the Commission."
A. "... I don't remember, and it doesn't sound like something I would say. She could very well have construed that that is what I meant, but I did not say that."
Q. "She might have taken it that way, though, is what you are saying?"
A. "She might have taken it that way...."
Q. "And did you inform her (Ms. Bruner) that Ms. Shelton had arranged for Sharon Miller of her office to attend the hearing also?"
A. "I don't remember. Maybe I did. I don't remember that. I don't know why I would have told her that. There were a number of people from EEOC at that hearing."

In that deposition, Ms. Mead testified to the effect that the timing of her official visit to the St. Louis District Office, the first office business day for Ms. Bruner after her testimony before this Committee, was merely coincidental.

She also testified that the date of her last visit to the St. Louis office before June 27, 1988 was December 11,

1986. Her district office official visit schedule, produced as part of deposition Exhibit No. 2, revealed that between her December 11, 1986 and June 27, 1988 visits to the St. Louis office, she had officially visited 17 other district offices: 7 of them one time each; 5 of them 2 times each; 4 of them 3 times each; and one, Miami, four times; a total of 33 district office visitations in that period of time.

If the visitation date was coincidental, it was, in the circumstances, a very strange coincidence, Ms. Bruner's very first business day back in her office after her testimony before this Committee. Was it any more coincidental than the call to Ms. Bruner from Mr. Troy's office the same day the Committee subpoena was served on her?

Ms. Mead was, and is, a superior of Ms. Bruner and reports directly to Chairman Thomas. In her position in headquarters she works closely with Mr. Troy and Ms. Shelton. In her September 12 deposition, Ms. Mead does not deny that at that June 27 official visit she was critical of Ms. Bruner's June 23 testimony before this Committee, nor does she deny that what she said to Ms. Bruner about her testimony might have been taken by Ms. Bruner to mean that, as a result of her testimony, she was in trouble with EEOC headquarters. That was criticism from EEOC headquarters, clearly harassment and intimidation because of her testimony before this Committee.

(4) EEOC headquarters officials took advantage of every opportunity to harass, intimidate and retaliate against Ms. Bruner for her testimony before this Committee.

The Quality Review of the St. Louis District Office and its Area Office conducted by Field Management Programs-West under the Directorship of Ms. Shelton provided such an opportunity and she took advantage of it.

Although the field work for the Review was completed March 4, 1988, Ms. Shelton did not make the Review report available to Ms. Bruner until October 26, with the following warning: "To the extent that the information obtained during the review is reflected in our appraisal of your performance during FY 88, you are requested to review this document carefully and respond in writing.... By November 2, 1988." (BC#100)

Her Performance Appraisal for FY 1988 was dated October 28, 1988. She did not receive it until October 31, 1988. The accompanying memorandum advised her: "Please call me by November 1, 1988 to set up an appointment to discuss the appraisal.... As you can set up an appointment to di[illegible] appraisal.... As you can determine, inro[illegible] developed by Field Management Programs and supplied by the District has been used to develop the rating." (BC#102)

Ms. Bruner was given six days to respond to the Review Report. Compare that treatment of Ms. Bruner with that accorded two other District Directors.

For example, field work for the Review of the Memphis District office, conducted by Field Management Programs-East, was completed March 25, 1988. The Review Report

was made available to the District Director, September 22, 1988, with the following request: "By October 14, 1988, please provide me with a written response"; twenty-two days to respond.

Field work for the Review of the New Orleans District office, also conducted by the East Region, was completed July 1, 1988. The Review Report was made available to the District Director, October 24, 1988, with the following request: "By November 7, 1988, please provide me with a written response"; fourteen days to respond.

Ms. Shelton and Mr. Troy also took advantage of the Performance Appraisal for FY 1988 as another opportunity to retaliate against Ms. Bruner. This was accomplished by rating her "Minimally Satisfactory" on Element III RESOURCE MANAGEMENT. That required a Summary Rating of "Minimally Satisfactory" even though Elements I, II and IV were each rated "Fully Successful".

The stated reason for the low rating as to Element III was as follows:

> "Although the Director has had some success in the effective utilization of human and material resources, there are still a number of instances where additional improvements are necessary in order for the office resources to be most effectively managed. Additionally, the extent to which the Director's accomplishments under this element can be described as fully successful in terms of effective utilization of human and material resources is now greatly tempered by the incidence of ADEA charges where the two year statute of limitations expired before full processing could be concluded. The capacity of the case tracking and management systems notwithstanding, it is clear that the Director, supervisors, and managers have not demonstrated the ability to ensure that every ADEA charge is properly and expeditiously processed to completion before expiration of the statute of limitations. The effectiveness of a case management system, much as the resource management ability of a manager, is measured by the success of its operation. Based on the latter, the Director's accomplishments under this element are rated as "Minimally Satisfactory." (BC#103)

The addition of the ADEA charge-statute of limitations issue to Element III RESOURCE MANAGEMENT in the SES Agreement for FY 1988 retained the issue as a subjective issue so that Ms. Shelton and Mr. Troy could be selective in determining which directors should be punished for lapsed charges and which not. The subjective standards used are "acceptable reasons" and "unacceptable reasons" for lapsed charges.

That subjectivity enabled them to punish and retaliate against Ms. Bruner again and they did so. (See, page 4 supra.)

By memorandum dated November 11, 1988 in response to the Appraisal of her Performance for FY 1988, Ms. Bruner challenged the justification for the Element III low rating given her and also challenged the validity of the Element III low rating as being based upon a standard of Element III of which she had not been given the notice in

advance of the end of the fiscal year required by official EEOC SES Procedures. (BC#105)

(5) The retaliation against Ms. Bruner culminated in December 1988 with her removal from the Senior Executive Service and her demotion to Deputy District Director in another District Office, effective January 31, 1989, as a GM 15. The necessary foundation for this demotion was laid by the "Minimally Satisfactory" Performance Appraisal Ratings for FY 1987 and FY 1988. (BC#37, 45, 103, 108 and 109)

RECOMMENDATIONS

I. That the wrongs done Ms. Lynn Y. Bruner in the "Minimally Satisfactory" Performance Appraisals and Ratings for Fiscal Year 1987 and Fiscal Year 1988 be corrected by raising the Summary Rating for each of said Fiscal Years to at least "Fully Successful."

II. That the removal of Ms. Bruner from the Senior Executive Service be reversed, thereby enabling her to retain her SES status.

III. That the official EEOC Senior Executive Service Performance Appraisal and Rating Procedures be amended to require the Performance Review Board to make an appropriate certification on each document presented to, and considered by it, in connection with each Senior Executive Service Performance Appraisal and Rating reviewed by it.

IV. That the official EEOC Senior Executive Service Performance Appraisal and Rating Procedures be amended to require that the Final Appraisal and Rating Review notice sent to each Senior Executive include a full and complete copy of each document submitted to, and considered by, the Performance Review Board in its review of that Senior Executive's Appraisal and Rating.

V. That EEOC institute and maintain, at the Commission Member level, a hands-on management policy for efficiently and effectively monitoring the enforcement of the new policy requiring the policing of the ADEA statutes of limitations in the processing of ADEA charges to prevent their lapse under the ADEA statute of limitations.

VI. That a law be enacted, similar to the Age Discrimination Claims Assistance Act of 1988, Public Law 100-283, to extend the statute of limitations for ADEA charges filed with the EEOC which lapsed under ADEA statutes of limitations after April 7, 1988, the effective date of Public Law 100-283.

CHRONOLOGY

The following is a staff-prepared chronology of documents and events relating to: (1) the official EEOC policy for the processing of ADEA charges in the light of the ADEA statutes of limitations; (2) the revelation that first, hundreds, then thousands, of such ADEA charges had been allowed to expire under those limitations statutes; (3) actions of, and documents from, Ms. Lynn Bruner as Director of the EEOC St. Louis, Missouri District Office which impacted on that processing policy and those revelations; and (4) retaliation against Ms. Bruner by her EEOC superiors because of her actions and documents which impacted on that processing policy and those revelations: (for reference purposes, the entries are numbered in chronological order, BC#1, etc.)

BC#1
1/86 — ON-SITE REVIEW of the Los Angeles District Office by EEOC Headquarters review team revealed that the Office had permitted a large number of ADEA charges to run the two-year statute of limitations.

BC#2
7/16/86 — DETROIT DISTRICT FIELD OFFICE REPORT to District Director from Bennett. CC: Troy. "An examination of May 27, 1986 printout revealed that there are some 68 ADEA and 9 ADEA concurrent cases in the office's inventory in which the 2-year statute for filing suit has expired."

BC#3
8/86 — EEOC Headquarters ordered district offices to stop the practice of transferring charges (of all types) directly from district office to district office, pending development of a new policy by headquarters.

BC#4
8/3/86 — PROMOTION to Senior Executive Service (SES) of Bruner and her appointment as Director of the EEOC St. Louis District Office (DO). [NOTE: Ms. Bruner's employment record with the EEOC prior to 8/3/86:

7/19/71	Employed as Investigator (GS-9, step 1) in Seattle DO.
8/2/72	Promoted to GS-11, Investigator, Seattle DO.
3/3/74	Promoted to GS-12, step 1, Equal Opportunity Specialist (EOS), Seattle DO.
3/16/75	Promoted to GS-13, step 1, EOS, Seattle DO.
10/30/78	Awarded "Special Achievement Certificate in Appreciation and Recognition of Superior Performance" (included cash award)
6/3/79	Promoted to GS-14, step 1, Supervisory EOS, San Francisco DO.
5/2/82	Promoted to Deputy District Director (GS-15, step 1) Charlotte DO.
9/3/82	Awarded 10 year Length of Service Certificate.
10/13/85	Awarded $2,068 Job Performance Bonus.
6/20/86	Awarded "Special Commendation Certificate in Appreciation and Recognition of Outstanding Performance."]

BC#5
9/16/86 MEMO to Bennett from Bruner RE: Kansas City Area Office. "Upon my assignment to the St. Louis District Office, I received a briefing from your office regarding the operation of the District. A Regional audit had been conducted in February 1985, which identified serious deficiencies in the management of the Kansas City Office, as well as in the quality of case closures. A follow-up audit was conducted by Ralph Soto and Truman Harris on August 21 through 25, 1986, and although I have not yet received a written report of their findings, they did advise me that conditions appeared to be the same as those reflected in their February audit. I have reviewed the overall management approach, in place in Kansas City, and have decided to implement some changes which I believe will help to correct the problems which have been identified by your office. These changes include the redirection of Kansas City management's philosophy in relation to case processing; changes in personnel and management accountability system; and changes in staff assignments.... There are 1200 unassigned charges which simply cannot be touched.... I cannot stress enough the need for expeditious action at the Headquarters level to bring the Kansas City workload within manageable proportions.... Age cases will be identified and flagged in the computer so that we can notify the CP [charging party] before the lapse of the 2-year Statute of Limitations. However, these cases will also be placed in the pending backlog.... I know you will agree that the workload problem in Kansas City is acute, and I hope that after considering the above statistics related to staffing, you will agree that immediate action must be taken to secure additional staff, and transfer some of the workload. Certainly, I am open to any recommendations you may have which would resolve the backlog or other problems in Kansas City. The options which are outlined above represent all that I perceive as being available to us at this time. However, you may well have additional solutions. I welcome your assistance." [NOTE: This memo consisted of 15 pages detailing Ms. Bruner's plans and suggestions for dealing with the problems she inherited in that district office. When Lynn Bruner became St. Louis Office District Director on 8/3/86, about 50 percent of that district office's charge inventory was over 300 days old. Bennett testified that he passed this memo and information along to his superior, James Troy]. [See, 3/26/87 entry below.]

BC#6
2/13/87 MEMO to Troy from Bruner RE: Request by Kansas Commission on Civil Rights [for a contract with EEOC to handle ADEA cases]. "...[I]f it is at all possible to contract with Kansas for processing of age cases, I would encourage that we do so. As you know, we have a serious backlog problem in Kansas City which is most glaringly problematic when it comes to age cases. We have a very large number of age cases which are approaching the 2-year statute of limitations...."

BC#7
3/2/87 MEMORANDUM to District Directors from Troy RE: FY 1987 SES Performance Standards Agreement. "Note that

numerical production standards are passe, and that we are attempting to focus on quality processing."

BC#8
3/24/87 MEMO to Troy from Bruner RE: Upward modification of FY 87 Contract for Kansas Commission on Civil Rights [to process cases from the inventory of our Kansas City EEOC Area Office]. "...As you know, the Kansas City Office has been dramatically understaffed for the last several years.... We presently have approximately 1600 cases which are backlogged, and the backlog is growing at the rate of 460 cases per year. I desperately need assistance in helping eliminate this backlog...."

BC#9
3/26/87 MEMO to Shelton from Bruner RE: Transfer of Kansas City Area Office's Cases. "It is my understanding that agreement was reached between Jim Troy and Joe Bennett that some portion of the pending inventory in the Kansas City Office could be transferred to other offices in what used to be Region II. I would like to call this matter to your attention, and ask that whatever steps are necessary be taken to allow me to transfer as many of these cases as possible to other District offices... there are presently 1600 cases backlogged in the Kansas City area office... Because of the severe backlogging, we are running the statute of limitations on a large number of Age cases, and in some situations, simply will be unable to process them prior to the expiration of the 2 year statute of limitations.... To illustrate, we presently have a total of 148 Age cases on which we will have exceeded the statute of limitations before they can be assigned, given our present rate of assignment, unless I instruct the Kansas City Area Office to assign these cases out of sequence.... I am bringing this matter to your attention for two reasons: First, to illustrate the urgency of our need to transfer cases immediately to other District Offices; and second, to request guidance from you as to whether we should assign Age cases on a priority basis, in order to avoid running the statute of limitations...." [NOTE: See, 8/26/87 and 8/28/87 entries.] [NOTE: Ms. Bruner never did receive a response to her request for guidance as to assignment of ADEA charges on a priority basis even after the 3/26/87 memo was resubmitted to Ms. Shelton at her request 8/28/87.]

BC#10
4/15/87 MEMORANDUM to District Directors from Troy. RE: Revised FY 1987 Performance Plans. "...As you can see, the number of performance elements has been reduced from six to four... Your accomplishments and activities during the first six months of this fiscal year will be considered in your FY 1987 rating.... In Performance Element II, Operational Objectives, the goals for 300 day old are based on your statistics at the end of the first quarter....we will assess your second quarter average processing time...and develop, with you, a reduction goal for the remainder of this fiscal year. We will be evaluating progress on 300 day old cases and reduction of inventory on a quarterly basis beginning June 30."

BC#11
5/6/87 MEMORANDUM to District Directors from Chairman Thomas, Troy, Charles A. Shanor, General Counsel, and Pamela Talkin, Chief of Staff. RE: District Director Performance Standards - quality charge processing and litigation enforcement.

BC#12
5/7/87 MEMORANDUM with SES Agreement for Fiscal Year 1987 for St. Louis District Office from Bruner to Troy CC: Shelton RE: SES Agreement for Fiscal Year 1987. "...I would like to bring to your attention certain concerns related to Performance Elements I and II.... Based on my analysis of our workload, and our projected receipts and closures for the remainder of the fiscal year, I do not believe that we can reasonably be expected to meet this standard (no more than 10 percent of inventory over 300-days-old at the end of the fiscal year, or the requirement that we maintain a level inventory in order to be fully successful.... I asked all supervisors to provide me with a projection.... They were also asked to consider the fact that all EOS's will now be taking charges, and that a great deal of training will be taking place during the remainder of the fiscal year.... Based on these unit projections, I arrived at a total expected production figure.... These projections are reflected on the attached chart.... As you can see from the attached, we have projected that 27 percent of our inventory will be over 300-days-old at the end of the fiscal year." [NOTE: This memo was not provided to the EEOC Performance Review Board as part of Ms. Bruner's Performance Rating record for fiscal year 1987 for the purposes of that Board's review of her rating for that fiscal year].

BC#13
6/11/87 MEMORANDUM to Shelton from Bruner. RE: Quality Control Review of Hearings Unit in St. Louis District Office. "...it is noted that I did not approve the use of the GS-5 Hearings Unit clerical position description for recruiting a new clerical...at least 60 percent of the clerical's time would be spent in typing,...I am reluctant to hire a GS-5..., and then not be able to cover the typing needs of that unit. We are so severely understaffed with clericals in this District... (We presently have three compliance units without clerical support.) ... If an additional GS-4 clerk typist slot can be allocated to the Hearings Unit, then I would have no trouble approving the use of the GS-5 classification. If you have any comments or advice on this point, please let me know." CC: Doug Bielan, Director, Federal Sector Programs.

BC#14
6/22/87 MEMORANDUM to Shelton from Bruner. RE: Management Improvement Project. "I am enclosing a proposed Management Improvement Project. This project addresses the development of a system to key training delivery and other training activity directly to those areas of charge processing which are in need of improved quality....improved quality of our overall work product.... The areas we have identified are the quality of Interviews and Investigative Plans. As we identify additional areas we will advise your

office.... We look forward to working with you in this endeavor, and await your approval of this...Project."

BC#15
7/87 EEOC Headquarters established a new charge transfer policy requiring that all charge transfers from one district office to another be made by headquarters and not directly between district offices.

BC#16
8/18/87 MEMO to all EEOC District Directors and Regional Attorneys from Charles Shanor, EEOC General Counsel, and Troy RE: ADEA Litigation and the Statute of Limitations. "It is essential that the Commission, in our investigation of ADEA discrimination claims and in preparation of such cases for litigation, minimize the chance that any claims are barred by the statute of limitations. Unfortunately, a significant number of age cases being forwarded to the Commission for approval for litigation have statute of limitations problems. Over one third of all [Presentation Memoranda] submitted [by District offices] involve cases that are beyond the two year statute of limitations. A number of cases recently submitted were beyond the three year statute of limitations...." [NOTE: See, 8/26/87 entry below.]

BC#17
8/19/87 INVITATION from Senator Melcher, Chairman, Senate Special Committee on Aging, to EEOC Chairman, Clarence Thomas, and Vice Chair, R. Gaull Silberman, to testify before the Committee on 9/11/87. [NOTE: The hearing date was later changed to 9/10/87 in order to accommodate Chairman Thomas.]

BC#18
8/19/87 INITIATION OF SENATE AGING COMMITTEE OVERSIGHT of the EEOC's performance in enforcing the Age Discrimination in Employment Act. Committee Investigators, Jim Michie, and Michael Werner began to interview current and former employees and officials of the EEOC. Several of these individuals described what they perceived to be "problems" in enforcement of the ADEA, including lengthy delays in investigations which had resulted in ADEA cases exceeding the two and three year statutes of limitations. [NOTE: See, 9/3/87 entry below.]

BC#19
8/21/87 MEMORANDUM to Shelton from Bruner. RE: Transfer of Cases. "We are completing the transfer of the 200 cases from Kansas City to New Orleans. However, I have not heard anything further from you concerning the transfer of the remaining 200....it is essential that additional cases be transferred from both Kansas City and St. Louis, if we are to have any hope of reaching an acceptable level of 300-day-old cases by the end of FY 88."

BC#20
8/26/87 TELECON between Bruner and Shelton. RE: The ADEA Case Situation in Kansas City. According to Ms. Bruner, she referred Ms. Shelton to Ms. Bruner's above memo of March 26, 1987 in which Ms. Bruner described the problems with ADEA cases running the statute of limitations and had asked Ms. Shelton for resources

and guidance. Ms. Shelton, according to Ms. Bruner, asked Ms. Bruner to send her a copy of the March 26 memo. [NOTE: See, 8/28/87 entry below.]

BC#21
8/27/87 MEMORANDUM to Andrew S. Fishel, Director Financial and Resource Management from Bruner. RE: Budget Modification Request. "At the present time, we are understaffed by three clericals in St. Louis and one in Kansas City, and will continue to be understaffed through the end of FY 87. Therefore, we are requesting an additional $3,000 in overtime... Your assistance is appreciated." CC: Shelton.

BC#22
8/28/87 MEMORANDUM to Shelton from Bruner. RE: Transfer of Kansas City Area Office's Cases. [NOTE: This is the memo by which Ms. Bruner sent to Ms. Shelton a copy of the 3/26/87 memo to Ms. Shelton, BC#9.]

BC#23
8/28/87 MEMORANDUM to Douglas Bielan, Director Federal Sector Programs from Bruner. RE: SLDO Hearings Unit Manpower Allocation. CC: Shelton. [NOTE: This memo requests the allocation of an additional Administrative Judge position for the St. Louis District Office Hearings Unit, citing workload/receipts factors, 300-day-old case goal, and absence of one judge for surgery to be followed by further surgery, and other justification.]

BC#24
8/31/87 MEMORANDUM to Schmelzer and Shelton from Fields (now Bivins). RE: Transfer of charges from Kansas City Area Office to the New Orleans District Office. "Attached is a copy of the memorandum prepared by NODO managers and task force employees reporting on their visit to the KCAO...." CC: Troy.

MEMORANDUM to Fields from Jeffrey Agular, Supervisory Trial Attorney and Cheryl Jones-Black, Supervisory EOS (both on Fields' staff). RE: Briefing report on Charges reviewed for transfer from the Kansas City Area Office (KCAO). "....In applying the above guidelines to the 348 charges reviewed, 148 charges did not comply with the guidelines, therefore, these charges were rejected for transfer...every category of cases which was to have been screened out before this transfer list was created, was represented in the files presented...The screening of the charges for transfer were not done by the pending office (KCAO)...Points of Concern...Charges which could be closed for no jurisdiction were not processed as a quick closure, even though the EOS indicated this information in the file....cases which had been previously assigned to an EOS for investigation were not to be transferred. This was not possible in that all cases were assigned to an investigator for the purpose of drafting a Request for Information (RFI)...all have had some previous contact with the Respondent by an EOS...." [NOTE: See, 10/16/87 memo.]

BC#25
9/3/87 LETTER to Chairman Thomas from Chairman Melcher requesting data and information as to EEOC's enforcement and administration of the ADEA Act, including data as to the number of ADEA cases which

had expired under the ADEA two-year statute of limitations.

BC#26
9/9/87 TELECONS between the Office of Troy and all EEOC District Offices. RE: EEOC charges that had exceeded the two year statute of limitations. Two questions were asked of each District Office: (1) How many open ADEA charges in the office inventory exceeded the statute of limitations as of 9/8/87; and (2) how many open ADEA charges will have exceeded the statute by 9/30/87. [NOTE: INTERNAL EEOC DOCUMENTS INDICATE THAT BY 9/9/87, THE DAY BEFORE THE SENATE AGING COMMITTEE HEARING, EEOC HEADQUARTERS KNEW THAT ADEA CHARGES RUNNING THE STATUTES NUMBERED IN THE HUNDREDS, AND, BY NO LATER THAN 9/11/87, EEOC HEADQUARTERS KNEW THAT THE NUMBER WAS OVER 900, and that the 900 cases involved all but 1 of the 23 District Offices.]

BC#27
9/10/87 HEARING, chaired by Senator Melcher, on EEOC enforcement of the ADEA. EEOC Chairman Thomas was a witness, accompanied by EEOC General Counsel, Charles Shanor.

BC#28
9/11/87 BRUNER received her mid-year performance evaluation for FY 1987. The review acknowledged that Bruner had conducted a review of the Kansas City Area Office and identified problems in workload and staffing. The mid-year review was positive in nature.

BC#29
9/21/87 MEMORANDUM to District Directors from Shelton and Schmelzer. RE: District Director FY-87 Assessment. Memo requests "a self assessment of your performance" for the purposes of annual performance appraisals, including specific discussion of "specific areas of concern" as follows: "St. Louis office - Pending inventory up 29%, 300 day old charges up 4% to 25.7%, Why 243 charges pending in Intake?"; Kansas City office - Productivity down 39 to 62.5 per investigator, Why 346 charges pending in Intake?, 300 day old charges up 23.1% to 51.5%."

BC#30
10/1/87 OFFICIAL EEOC AMENDMENT OF OFFICIAL EEOC COMPLIANCE MANUAL, Section 2.9 "Charges Warranting Priority Handling", by adding at the end of said Section 2.9, the following new sentence: "ADEA cases where the two year statute of limitations is near to expiring should also be investigated on a priority basis."

BC#31
10/1/87 MEMORANDUM to Shelton from Douglas J. Bielan, Director, Federal Sector Programs. RE: SLDO Hearings Unit Manpower Allocation. "We have reviewed Ms. Bruner's memorandum and recommend another Administrative Judge be assigned to St. Louis...." [NOTE: The memo cites justifications much the same as those cited by Ms. Bruner in her request memo of 8/28/87].

BC#32
10/2/87 MEMORANDUM to Shelton from Bruner. RE: Self assessment for FY 87 Assessment. This memo covered all aspects of self assessment except the productivity

issues, which were to be covered in a later memo. [See, 10/21/87, memo].

BC#33
10/16/87 MEMORANDUM to Shelton from Bruner. RE: Transfer of Charges from Kansas City Area Office to New Orleans District Office. "...The memo to you from Pat Fields seems to take the position that the cases should have had a final, unilateral review by the Kansas City staff, with all the selection work having been performed. I believe this to be an erroneous interpretation of procedure, since your memo states as follows: 'It would be desirable to have the receiving office send a management representative to participate in the review and selection of the charges to be transferred.' We read your memo to indicate that the receiving office would participate in the final selection process. In that light, the complaint that the reviewers from New Orleans had to go through more than 200 cases...seems to be the result of a misunderstanding." [NOTE: The memo then discusses each complaint raised by the New Orleans office as to the transfer.] "I believe you can see from the above that there was no actual mishandling of these transfers by Kansas City... At this time I must renew my request to have the 200 additional cases transferred from the Kansas City Office. As I have previously advised, the Kansas City staff is too small to be able to timely process the accumulated inventory of cases and its yearly receipts. Transfer of cases is essential to timely processing, reduction of inventory, and the reduction of 300-day-old cases. Your consideration and assistance in this matter are appreciated." CC: Troy and Joe Doherty, Area Director, Kansas City Area Office.

BC#34
10/15/87 MEMORANDUM to Shelton from Bruner. RE: St. Elizabeth Hospital Systemic Investigation. "...The attached chronology was prepared by the St. Louis Systemic Unit... If this were a current investigation, there are numerous additional pieces of information which I would insist be secured. However, the investigation of this case was completed in 1982, and was investigated at a time when the approach to systemic investigations was substantially different from the approach used today."

BC#35
10/21/87 MEMORANDUM to Troy thru Shelton from Bruner. RE: FY 87 Program Performance. "In my memo to you dated May 7, 1987, I advised you that it would not be possible for the St. Louis District to meet the program goals which had been established in my SES Agreement, effective April 1, 1987. I went into considerable detail in explaining the problems which would prevent our meeting these goals, and attached a chart illustrating what I projected to be reasonable accomplishments on the part of our staff during the last two quarters of the fiscal year. The chart attached to this memo illustrates our actual performance during this period. The following is a discussion of our program performance: I. St. Louis A. Receipts -- In my May memo, I projected that we would receive an additional 690 charges during the last quarter. I noted, however, that there may well

be an unexpected, but natural increase in receipts during this period. In fact, this is exactly what happened. We received 904 charges, an increase of 214. Most of this increase can be accounted for by our having received 203 age charges filed against three plants which closed in this jurisdiction. B. Closures -- I projected a total of 483 closures during the period of April 1 thru September 30. We actually closed 651, of which 404 were 300-day-old closures. Our total closures for the year was 1601. Our available staff for FY 87 was 15.4 when you do not deduct time spent in Intake by these EOS's during the third and fourth quarter. The average productivity for these 15.4 EOS for FY 87 was 81, in the combined "Extended" and "Rapid Charge Processing" function. There were a number of events which impacted our productivity during FY 87. These are discussed at Item E below. When these events are taken into account, I believe that our productivity was more than acceptable. In fact, if we take these factors into account, our average productivity would have been 105 in the combined functions. C. 300-day-old Charges -- I had projected that our pending inventory at the end of the fiscal year would contain approximately 230 300-day-old cases in St. Louis. In fact, our inventory contains 27.6%. This occurred even though we closed all but 6 of the 410 300-day-old cases that I had originally projected. The problem was that on the chart provided in May, we had indicated that we had 443 potential 300-day-old charges pending while, in fact, we had 512. Thus, as of the end of the fiscal year we have a total of 445 accountable 300-day-old charges, instead of the 370 which I had projected. D. Inventory Reduction -- I advised you earlier that it would not be possible to achieve a level inventory, which was established as the "meet" goal for my SES agreement. I estimated that we would increase our inventory in St. Louis by 25%. This estimate was accurate.... II. Kansas City A. Receipts -- In my May memo, I projected that we would receive an additional 682 charges during the remainder of the fiscal year. In fact, we received 714. Most of this increase can be explained by the fact that we received 50 charges alleging the same issue against one respondent. B. Closures -- I projected that we would close 363 charges during the remainder of the fiscal year. In fact, we closed 307. I believe that this under production is adequately explained in Section E below. C. 300-Day-Old Cases -- In May I projected that we would have a total of 487 300-day-old charges remaining in Kansas City as of the end of the fiscal year. In fact, we have 515. This difference can be explained by the fact that we had slightly fewer cases closed than I had projected, and more in the potential pending inventory than originally estimated. This equates to 32% of our inventory as opposed to the 28% projected. Our closures for the year were 1583, for an average production of 75 per EOS. I note that 83% of our closures for the fiscal year were 300-day-old cases. D. Inventory Reduction -- I projected that we would show a 5% growth in our inventory in Kansas City. In fact, we experienced a 2% decline. This can be accounted for in the fact that 200 more cases were transferred from Kansas City than I had originally projected." [NOTE: In addition to the above excerpts,

this memo responds to each of the "specific areas of concern" described in the 9/21/87 memo above requesting a self assessment of the FY 1988 performance as to both the St. Louis office and the Kansas City Area Office.] [NOTE: Neither this memo nor the 10/2/87 memo above were included in the FY 1987 Appraisal and Rating documents provided to the 1987 PRB for the purposes of their review function.]

BC#36
10/87 PERFORMANCE RATING of Bruner for Fiscal Year 1987, prepared by Ms. Paula Montanez, Supervisory Program Analyst, Field Management Programs-West, for Shelton, Ms. Bruner's superior and the rating official for Ms. Bruner for Fiscal Year 1987. As a Program Analyst for Field Management Programs-West under Ms. Shelton as Director, Ms. Montanez' assignment for the June thru September 1987 period had been the St. Louis District Office. The proposal prepared by Ms. Montanez was "Highly Effective" for Element I, "Fully Successful" for Element II, "Highly Effective" for Element III, and "Outstanding" for Element IV for Ms. Bruner for FY 1987, and included narrative justification for each of those respective recommendations.

BC#37
10/30/87 MEMORANDUM to Bruner from Shelton, with Shelton's 10/30/87 Performance Rating of Bruner as such District Director for FY 1987. [NOTE: The ratings for Elements I, II, and III were each at "the fully successful level", each one level down from the "higly effective level" Ms. Montanez had recommended. [See, BC#27, above.] Ms. Shelton rated Ms. Bruner "unsuccessful" on the "300 Day Inventory" Standard of Element II and "unsatisfactory" on the "Inventory Reduction" Standard of Element II. A third Standard of Element II was rated "outstanding" and two others each "fully successful." Ms. Shelton lowered the rating for Element IV from the "outstanding level" recommended by Ms. Montanez to "minimally satisfactory level", thereby making the overall performance rating for FY 1987 "minimally satisfactory." The first two pages of Ms. Shelton's narrative as to Element IV summarize specific examples of accomplishments by Ms. Bruner in the areas covered by Element IV. The last page and one-half of that narrative specify the reasons for the "minimally satisfactory rating for that Element, characterized by Ms. Shelton as incidents "reflecting questionable leadership and judgment on the part of the Manager, viz: (1) allowing some ADEA cases to expire under the ADEA statutes of limitations and not giving ADEA cases priority handling required by the ADEA statutes of limitations; (2) "problems with the selection of cases for transfer"; (3) "the request for an additional slot in the Hearings Unit (of the district)"; (4) "selection of the cooperative education students in the district"; and (5) "designation of the systemic supervisor to devote practically full-time to the Management Improvement Project despite problems identified with some of the systemic cases".]

BC#38
11/2/87 MEMORANDUM to Shelton from Bruner. RE: Mid-year Review "....I would like to comment on performance element 2. Specifically, your items 3, 4 and 5.

Frankly, I am not totally clear on what is being said here, particularly since items 3 and 4 seem to be in contradiction. I would like to point out that our production up through the second quarter, district wide, exceeded that in 86. I would also like to point out that the primary reason why 86 production in Kansas City seems so great is because of a consolidation of 190 closures of charges against the same respondent. Please let me know if you have any questions."

BC#39
11/9/87 MEMORANDUM to Troy and Shelton from Bruner. [NOTE: Ms. Bruner met with Mr. Troy in his headquarters office on the date the memo was made and delivered by her. Mr. Troy, as the Director of EEOC's Office of Program Operations, was Ms. Shelton's superior and, under Paragraph F of Chapter 6 of the Official Policies, Regulations and Procedures for EEOC SES personnel, the Reviewing Official with the responsibility of reviewing the initial appraisal by Ms. Shelton and the written response thereto by Ms. Bruner].

BC#40
11/16/87 MEMORANDUM to Troy from Bruner. RE: Appraisal. [NOTE: This memo contains further written response by Ms. Bruner to the initial appraisal by Ms. Shelton for FY 1987 and returns the initial appraisal to Mr. Troy as Reviewing Official. The memo discusses aspects of Element I of the initial appraisal. As to Element II, it states: "In our discussion, I advised that my program performance standards had been rated as 'unsuccessful', even though there were reasons beyond my control for having missed them. I believe you stated that this would be changed. It occurs under both the 300 day and inventory reduction standards."]

BC#41
11/24/87 EEOC PERFORMANCE REVIEW BOARD (PRB) RECOMMENDATIONS on Form 436 as to the FY 1987 Performance Appraisal of Bruner as Director of the St. Louis District Office, signed by all three members, Allan Heuerman of the Office of Personnel Management, Harriet G. Jenkins of NASA, and William Ng as Chairman of the PRB (Mr. Ng was Deputy General Counsel of EEOC).

BC#42
11/24/87 MEMORANDUM to Bruner from Shelton. RE: Comments to Appraisal Response. [NOTE: This memo responds to Ms. Bruner's above memo of 11/9/87 to Mr. Troy and Ms. Shelton in which she commented on certain aspects of Ms. Shelton's initial FY 1987 appraisals and rating dated October 30, 1987. 11/24/87 was the date of the PRB meeting at which Ms. Bruner's appraisal and rating were reviewed].

BC#43
11/30/87 MEMORANDUM to Managers (St. Louis District Office) from Bruner. RE: Age Cases. "I have instructed Richard Schuetz and Joe Doherty to review our inventory on an ongoing basis to identify those age cases which need to be assigned immediately in order to avoid running the statute of limitations. In the future, if it is not possible for these cases to be assigned on a timely basis as a part of your routine

assignments, Richard and Joe will distribute them to the various units for priority assignment. These cases are to be prioritized so that the statute of limitations will not run prior to completion of the investigator. If you have any questions in this subject, please let me know."

BC#44
12/4/87 OFFICIAL ACTION by EEOC Chairman Clarence Thomas on SES Form 436, reviewing actions and recommendations of the FY 1987 PRB as to EEOC SES employees.

BC#45
12/18/87 MEMORANDUM to Bruner from Jo-Ann Henry, Director, Personnel Management Services, EEOC. RE: Performance Appraisal Rating. "Your final performance appraisal rating for the period ending September 30, 1987, is 'Minimally Satisfactory'."

BC#46
12/21/87 MEMORANDUM to EEOC field offices from EEOC Chairman Thomas. RE: ADEA statute of limitations. "[I]n a number of ADEA cases last year, the two-year statute of limitations was allowed to expire without justification. I find this disgraceful and absolutely inexcusable....Indeed, I view allowing a statute of limitations to lapse in a case to be tantamount to a dereliction of duties....I will not tolerate such mishandling of even one case. No supervisor or manager in this agency can be considered to have performed their job in a satisfactory manner if the applicable statute of limitations in any case under their supervision is allowed to expire."

BC#47
12/23/87 MEMORANDUM to Management (St. Louis District Office) from Bruner. RE: Section 7d Dismissals. "SUBJECT: Section 7 Dismissals. At our Director's meeting in November, several Directors asked for clarification of Field Note #108-21 concerning 7d dismissals, since the Field Note was somewhat equivocal. Region has now provided guidance on that issue as follows: Q. 'In a situation where an ADEA investigation will not be concluded before the statute of limitation expires, can a case be closed based only on the failure of a 7d conciliation effort?' A. 'No. Until otherwise notified, the case must be investigated, regardless of the fact that the statute will run before a determination is rendered (See, Field Notes 108-21, 14.8). It is expected that, as appropriate, you would advise the charging party that the time limits are near expiration so that the charging party's rights will not be forfeited. It is also expected that every effort will be made to avoid such an occurrence.' Please ensure that all staff are aware of this policy and that your unit is in compliance. Please advise if you have any questions."

BC#48
12/23/87 DAILY LABOR REPORT article headlined "EEOC CHAIRMAN VOWS ACTION AGAINST DELAYED HANDLING OF AGE BIAS COMPLAINTS." "Management problems at a handful of EEOC's 24 district offices interferred with the

prompt handling of age discrimination charges, resulting in the agency's failure to process nearly 900 complaints in time to meet the Age Discrimination in Employment Act's two-year statute of limitations.... Characterizing the situations as 'totally inexcusable', the Commission's Chairman Clarence Thomas, has vowed to take direct action against the half dozen district directors he holds responsible....other EEOC officials said that more than 100 late cases were pending in Dallas, St. Louis, Philadelphia, Baltimore, and New York and a 'substantial number' are pending in Birmingham, Ala. On the other end, Atlanta, San Francisco, and Chicago were among the offices with either none or few of such cases,...The Chairman...has already taken disciplinary steps against some of the offending district directors - seven of whom were given 'minimally satisfactory' or 'unsatisfactory' assessments during a recent personnel rating. [NOTE: BC #44 above as to "Fully Successful", "Highly Successful" or "Outstanding" FY 1987 performance ratings (and, in some instances, bonuses) approved by Chairman Thomas, in spite of lapsed age discrimination charges, for district directors in Chicago, Houston, Cleveland, New Orleans, San Francisco, Atlanta, New York, Los Angeles, and Milwaukee, and for the San Francisco director he increased the bonus to $7,000 from the $6,000 recommended by the PRB.]

BC#49
1/4/88

BNA's EMPLOYEE RELATIONS WEEKLY article entitled same as DAILY LABOR REPORT 12/12/87 article above. Contents of article also practically the same.

BC#50
1/8/88

LOS ANGELES TIMES article entitled "900 AGE BIAS CASES BOTCHED BY U.S. AGENCY." Contents of article much the same as the above two. Two additions are "...Commission staff members are continuing to investigate the 900 cases and may be able to resolve some of the complaints", and "It was likely, he (Thomas) said, that not more than 50 of the 900 cases would have been found to have sufficient merit to prompt the filing of a court case..."

BC#51
1/10/88

ST. LOUIS POST-DISPATCH article entitled "AREA EQUAL EMPLOYMENT DIRECTOR BLAMES HEAD OFFICE FOR DELAYS" by Tim Bryant of the Post-Dispatch staff, "The director of the Equal Employment Opportunity Commission's regional office here says the commission's chairman acted unfairly when he criticized a massive backlog of complaints of age discrimination. The agency's headquarters took 11 months to act on her urgent requests for help, said the director of the St. Louis office, Lynn Y. Bruner. She was reacting to comments by Clarence Thomas, the Commission's Chairman. He said in an interview published Friday in the Los Angeles Times that the agency's St. Louis office was among seven regional offices that had failed to act on large numbers of age discrimination grievances...The director responded Friday night by saying, 'I don't know where Chairman Thomas got his statistics. I

have gone on record...asking for assistance from our head office in order to process the backlog of cases which had developed prior to my arrival here in August 1986.' The month after her arrival, Bruner said, she asked for the transfer of 1,200 cases from the agency's branch office in Kansas City and 300 cases from St. Louis. She said she had wanted the cases sent to commission offices with smaller workloads. Bruner said she also had asked for 15 more employees. 'I pleaded with them to transfer the cases quickly,' Bruner said. 'I told them I had to have cases transferred, and I had to have staff.'...'We still have more cases than people to process them,' she said. 'I'm making every effort that I can. Age cases are being assigned on a priority basis'..." [NOTE: Ms. Bruner was responding to the reporter's request for her response to the charges Chairman Thomas had made against her and her office as reported in the Los Angeles Times 1/8/88 article above.

BC#52
1/14/88 TELEPHONE CALL to the Committee Staff investigator from Bruner returning, for the first time, the investigator's sixth call in four days, the first call to her being on 1/11/88.

BC#53
1/14/88 TELEPHONE CALL to Sayer from Bruner to inform Headquarters of Committee's request for material and to ask guidance and instructions. [NOTE: Ms. Bruner was instructed to inform the Committee that all such requests must be made through the Office of Congressional and Legislative Affairs.]

BC#54
1/14/88 TELEPHONE CALL to Bruner from Sayer to inform Ms. Bruner that EEOC Chairman Thomas had changed the procedure and that Ms. Bruner should provide the Committee with the requested material. Ms. Bruner requested memo to that effect from Ms. Sayer so that she could be sure to comply with the new procedure.

BC#55
1/22/88 MEMORANDUM to District Directors, Area Directors, Local Directors from Troy RE: Administrative Enforcement - ADEA Charges. CC: Shelton and Schmelzer. "The Chairman's December 21, 1987, memorandum is a clear statement of this Agency's concern for the rights of those who seek our assistance. The revelation that a large number of ADEA charges in our workload has exceeded the statute of limitations begs not only explanation, but also restructure of our approaches to case management and our systems pertaining thereto. Therefore, the purpose of this memorandum is threefold; to provide guidance to be used in restructuring case management approaches, to request itemized reports of pending workloads, and to request your statement of reasons for expiration of the statute prior to charge resolution during FY 87. We are aware that the hallmark of most of your case management systems is 'processing in docket order'. This facet must be altered when pertaining to ADEA charges that are nearing statute

expiration. The following must immediately be made a part of your management of the ADEA case workload: (a). ADEA cases accepted for processing within 180 days of expiration of the 2 year statute of limitations must be assigned and resolved, through full investigation or otherwise, on a priority basis...that is without 'docket order' consideration...(c). Written notification must be provided to charging parties prior to the expiration of the two year statute for any cases pending compietion of processing by the field office. The notification should be completed at least 60 days prior to the expiration of the statutory limitations period....As you are by now aware, the expiration of the statute in 900 charges has garnered interest in all quarters....I trust that we may put this situation behind us and concentrate on better management of our caseloads during FY 88...."

BC#56
1/25/88

LETTER to Senator Melcher from EEOC Chairman Thomas. RE: 900 ADEA cases have run the two year statute of limitations. "...As part of a management review last fall, our district offices were asked to supply statistics on all open ADEA charges. Review of these statistics revealed that the statute of limitations had expired on approximately 900 cases, primarily located in eight of the district offices....Certain appropriate information was being intentionally withheld. It was at the very same meeting in November that I indicated that I thought it incumbent upon us if this was happening to check to see whether or not the age statutes were being missed. In December we got the bad news, and it was brought to me the week before the Christmas holidays....[A]ll district directors who missed the statute of limitations will be dealt with in the ratings. The mistake that we made at the top -- and I mean myself -- was to assume that no responsible person would ignore the statute of limitations on a regular basis....[W]e at no time knew we had this kind of a problem...." [NOTE: EEOC Headquarters learned about the 900 lapsed cases in early September, not in December as Thomas testified.]

BC#57
1/27/88

TELEPHONE CALL to Bruner from the Committee investigator to inquire about material the investigator had requested from Ms. Bruner on 1/14/88. Ms. Bruner responded that she was waiting for clearance in writing from Headquarters.

BC#58
1/27/88

MEMORANDUM to Bruner from William D. Miller, Director, EEOC Office of Audit. RE: Periodic audit of St. Louis District Office and Kansas City Area Office. "...this is to advise you that the Office of Audit will begin an audit...within the next thirty (30) days.... I expect the audit will be conducted over a period of seven (7) to ten (10) working days.... Approximately thirty (30) days following the audit, you shall receive a copy of the audit report for review. Your objections

and/or comments...no later than two (2) weeks following your receipt of the draft report...."

BC#59
1/28/88

HEARING conducted by House of Representatives Select Committee on Aging on AGE DISCRIMINATION: QUALITY ENFORCEMENT. EEOC Chairman Thomas testified: "I have accepted no excuses from our employees and you should accept no excuses from us.... It is at the heart of our enforcement policy which says that every person who comes to the commission deserves a remedy. It is at the heart of our Quality Assurance Program, which says that we should do things right the first time....I can honestly say that the missing of the statute of limitations in these 900 cases has been the single most devastating event in my tenure...exactly when I got an inkling that we had a problem with these 900 cases.... On a recent trip to New Orleans, a district director indicated to me that certain other district directors were not putting information into the central data system. It was at this point that...I instructed our Office of Audit to audit the input into the data system to detect whether information was being intentionally withheld. It was at the very same meeting in November that I indicated that I thought it incumbent upon us if this was happening to check to see whether or not the age statutes were being missed. In December we got the bad news and it was brought to me the week before the Christmas holidays...all district directors who missed the statute of limitations will be dealt with in their performance ratings....(we) at no time knew we had this kind of a problem...."

BC#60
1/29/88

MEMORANDUM to Sayer from Bruner. RE: Contact by Senate Special Committee on Aging. The memo informed Ms. Sayer of the Committee's request for "Any correspondence...with EEOC management related to problems in processing age cases." The memo renewed Ms. Bruner's request for clearance in writing for release of the material.

BC#61
2/2/88

MEMORANDUM to Bruner from Sayer. "...Your understanding of the process is correct. I would add and emphasize that (this office) needs to receive a copy of all information that is provided to the congressional caller.... We appreciate you keeping this office informed."

BC#62
2/9/88

MEMORANDUM to Troy THRU Shelton from Bruner. RE: Administrative Enforcement-ADEA Charges-Troy 1/22/88 Memo. "In response to your memo of January 22, 1988...I am forwarding...printouts for our Kansas City Office which were requested...I have not included printouts for the St. Louis Office...CDS is inoperable...and has been for some considerable period.... Without use of the computer, it is virtually impossible to manually prepare a list..." [NOTE: In response to the age charge statute of limitations problem mentioned in the 1/22/88 Memo, Ms. Bruner reminded Mr. Troy of

the problems in St. Louis and Kansas City when she took over that district office 8/3/86 and referred to her memo's of 9/16/86, 2/13/87, 3/24/87 and 3/26/87.] "When I met with you in Washington in June, 1987 to discuss my SES performance plan and other matters, I urged you to increase the number of cases to be transferred from Kansas City by another 600 cases for a total transfer of 1200. At that time, I tried to stress the serious problem existing in the Kansas City Office. To date, only 800 cases have been approved for transfer out of Kansas City. I do not know what more I might have been able to do to advise your Office, or the Regional Office, of the existence of a problem in the age jurisdiction. In trying to deal with this situation, we assigned as many cases as possible, and instituted the practice of sending out written notices to CP's 90 days prior to the lapsing of the 2 year statute. In fact, we have made every effort possible, within the limitations of the resources available to us, to timely process age cases and to meet our other goals, which in the past, have been stressed as equally important. We had many goals which were in conflict with the goal of processing all age cases in order to avoid running the statute. For example, we were required to have only a specified number of cases over 300 days old in our inventory, and upon my arrival in the District, approximately 50% of the inventory in both offices was over 300 days old. This made it desirable to close the oldest cases, irrespective of the statute under which filed. We were required to reduce our inventory by a specified amount, which made it desirable to close cases requiring the least amount of effort, irrespective of the statute under which they were filed. We were required to identify cases for extended processing and special handling, as part of our litigation program efforts. The cases which are most often selected for the litigation program are those cases which are the newest, irrespective of the statute under which filed. Thus, you can see, there were, and continue to be, many competing demands on a District when it comes to processing it's inventory. Because of my concern for these competing performance goals, and because of my realization that this Agency has an obligation to process all cases in a timely manner, not just age cases, I believed it was necessary to seek guidance from my Regional Director as to how to deal with this problem, as reflected in my memo of March 26, 1987. The following responds to the specific items in your memo related to the management of ADEA case workload:... It has long been the practice of this District to notify charging parties, as part of post charge counselling, of the statute of limitations in age cases. People are routinely advised as to the exact date on which the statute will run. In the future we will give them written notification at the time of filing, in line with your memo.... As noted in my memo of September 6, 1986, it has been the practice in the Kansas City Office to flag all age cases in the computer and to send out written notification to the charging parties 90 days prior to the expiration of the statute of limitation. This practice is also in

place in the St. Louis Office... In implementing item two, above, we will institute a standard practice of giving written notification to charging parties, at the point of intake, on any charge received within 90 days of expiration of the two year statute. This will include, then, the notification to charging parties whose charge is accepted within 60 days of the expiration date. I believe that the conditions in the Kansas City office, as cited above, and as outlined in the attached memos, provided adequate explanation as to why the statute of limitations expired on these cases. I made every effort possible to explain the conditions in that office and St. Louis, to advise of our case handling methods, and to seek assistance and guidance concerning same." CC: Shelton.

BC#63
2/9/88 — MEMORANDUM to District Directors from Troy. RE: CRITICAL PROGRAM ISSUES. "The Chairman testified before the House Select Committee...January 28...the Chairman stated that there was no reason that we could proffer that would exonerate this agency for allowing the rights of charging parties to be lost...Our January 25 memo also identified new procedures for processing ADEA cases...Appropriate compliance manual changes will be developed shortly." (Emphasis supplied)

BC#64
2/11/88 — LETTER to Committee from Bruner with 1986 and 1987 memos listed above.

BC#65
2/24/88 — SUBPOENA DUCES TECUM by the Committee to EEOC Chairman Thomas for data and documentation on enforcement of the Age Discrimination in Employment Act.

BC#66
3/4/88 — QUALITY REVIEW of St. Louis District Office and its AREA Office in Kansas City conducted by Field Management Programs-West: office field work completed this date. [NOTE: Ms. Bruner was not provided with the Report on this Review until 10/26/88. See, BC#97]

BC#67
3/8/88 — PRODUCTION to Committee by EEOC of subpoenaed data and documentation pursuant to 2/24/88 subpoena Duces Tecum.

BC#68
3/11/88 — AUDIT COMPLETION by EEOC Office of Audit in St. Louis District Office and Kansas City Area Office.

BC#69
3/30/88 — LETTER to Chairman Melcher from Deborah J. Graham, EEOC Director of Communications and Legislative Affairs, submitting to Chairman Melcher the March 23, 1988 Report to Chairman Thomas from Troy on the ADEA charges on which the ADEA statute of limitations had expired during FY 1987 and, separately, during FY 1988. "...With the imminent enactment into law of S. 2117, a way has been found

to help EEOC correct this error by assisting those people who came to us for help and who ultimately may be found to have been discriminated against. As Chairman Thomas advised you in January, corrective action has been taken to ensure that such mismanagement of charges does not recur." The Report by Troy to Chairman Thomas informs Chairman Thomas that: "...The Office of Program Operations has directed field offices to alter their approaches to charge management in order to preclude recurrence of this situation. We are also revisiting manualized instructions which guide processing of ADEA charges to determine what changes or clarifications can aid Districts in this regard." The Report as to expired ADEA charges by District Office is as follows (the District Office total includes the total for each Area office in the district):

Atlanta	1	Chicago	137
Baltimore	175	Dallas	76
Birmingham	13	Denver	37
Charlotte	1	Houston	69
Cleveland	25	Indianapolis	35
Detroit	105	Los Angeles	222
Memphis	65	Milwaukee	11
Miami	62	Phoenix	20
New Orleans	8	San Antonio	25
New York	150	San Francisco	0
Philadelphia	241	Seattle	50
		St. Louis	80
TOTAL EAST	846	TOTAL WEST	762

NATIONAL TOTAL 1,608

[NOTE: S. 2117, the Age Discrimination Claims Assistance Act of 1988, introduced by Senator Melcher on March 2, 1988, with 25 co-authors, was passed by the Senate on March 17, 1988, and by the House on March 29, 1988].

BC#70
4/7/88

AGE DISCRIMINATION CLAIMS ASSISTANCE ACT OF 1988 signed into law by the President as Public Law 100-283. [NOTE: That new law extends for an additional period of 540 days from 4/7/88 the statute of limitations for certain ADEA charges which the EEOC allowed to expire under ADEA statutes of limitation and required the EEOC to give written notice to ADEA claimants whose charges are affected by the law, to process charges so revived and to make reports to Congressional Committees.]

BC#71
5/6/88

MEMORANDUM to Bruner from Shelton. RE: ADEA Case Processing. "...[Y]our office failed to issue a final decision in the cases filed by Thomas P. Balch prior to expiration of the statute of limitations (April 7, 1988). Additionally, upon inquiry by a member of my staff as to why the lapse was allowed to occur, you stated that you had not received any guidance from Headquarters that indicates that ADEA cases should be completed prior to the expiration of the statute of limitations. Your response...causes me extreme consternation. It is inconceivable that you could be oblivious to

the plethora of memoranda, conference calls, meetings, and correspondence in which details of agency policies and procedures with respect to the priority processing of ADEA cases were specified, emphasized and/or reiterated. ...In the face of your FY '87 [performance] appraisal and the Chairman's [December 21, 1987] memorandum, not to mention guidance from the Director of Program Operations, your FY '88 performance agreement and even newspaper articles, all of which stated the Agency's position regarding the processing of ADEA charges, your statement that you have received no clear guidance on the matter is indefensible and almost offensive...."

BC#72
5/8/88

MEMORANDUM to Shelton from Bruner. RE: Response to Shelton's 5/6/88 memo. "It is unfortunate that you choose never to talk to me directly, because if you had done so, I would have told you, Sharon ...Miller obviously misunderstood what I said...It is...inconceivable that I would have made the statement attributed to me by Sharon. Didn't it occur to you that Sharon might have been wrong, especially since I have advised you and Jim Troy on more than one occasion, in writing, that we are prioritizing age cases, and taking every step possible to complete the investigation prior to the expiration of the statute of limitations?"

BC#73
5/10/88

MEMORANDUM to Shelton from Sharon Miller. RE: Bruner's phone call regarding ADEA memo. "Lynn Bruner telephoned me...May 10...to discuss the memorandum she had received from you regarding the St. Louis Office's handling of the Balch case, as well as ADEA case processing in general. Lynn was very upset about the reference in the memo indicating that she had expressed the opinion that she did not understand that there was an emphasis in processing ADEA cases on a priority basis, prior to the expiration of the SOL. She said any fool should know the emphasis being placed on the ADEA cases...she believed that I had misunderstood and misrepresented the content of our conversation...I referred to my notes from that conversation and discussed them with her...She replied by saying that I must have misunderstood her comment...I reminded her that EEOC's normal procedure for accounting for closure dates is the date the LOD is issued, not when CP is informed by telephone. Lynn then elaborated on the handling of the Balch case by indicating that the supervisor of the EOS had failed to follow up on the case to assure that it was closed prior to SOL...I asked if she had some method of tracking ADEA cases to assure the SOL does not expire, and she said she did... Additionally, I indicated that the issuances from the Chairman and OPO regarding ADEA cases do not provide for any exceptions to the guidance not to let the SOL lapse....Lynn closed by stating she did not know how she could continue to trust my representation of discussions I have with her, based on this episode...."

BC#74
5/12/88

MEMORANDUM to Bruner and James Neely, St. Louis District Regional Attorney from Charles A. Shanor, General Counsel and Troy. RE: Mid-Year Litigation Recommendations. "The decline in litigation

recommendations from your District is extraordinary in comparison to the size of your workload and to the kinds of charges received and processed. We cannot allow this negative trend to continue in such an important part of the Agency's responsibility. Therefore, we need to discuss with you local actions that may be taken to resolve this situation. You will be contacted shortly to schedule a conference call...You should also be able to communicate your definitive action plan for increasing litigation recommendations from your District. It is expected that your jointly developed plan will provide sound predictions of litigation recommendations to be submitted for the remainder of the fiscal year...."

BC#75
5/23/88

MEMORANDUM to Investigators (St. Louis District Office) from Bruner. CC: Attorneys and Managers. RE: Statute of Limitations on Age Cases. "Since November 1987, I have been meeting with many of you, along with your supervisors...with a particular emphasis on age cases which are approaching the statute of limitations. I have discussed with you the need to timely process age cases and have made numerous requests on the status of these cases directly to you and through your supervisor...I will expect your full cooperation in this matter. If you should need particular assistance of any kind in processing cases...you should bring the matter to my attention immediately. Attorneys who are processing cases for various reasons should also be cognizant of the age statute problem...Please advise if you have any questions."

BC#76
5/25/88

MEMORANDUM to Jim Neely, Regional Attorney, from Bruner. RE: Litigation Program. "In the meeting which I held with you, Richard Schuetz and the Supervisory Trial Attorneys on May 12, 1988, we discussed the progress of our litigation identification program and reviewed all of the cause cases on the TMC and Big Board lists. Cases were reprioritized and decisions were made concerning which cases seemed to have the most likelihood of becoming cause or failing conciliation prior to the end of the fiscal year. During that meeting, we discussed whether there were other approaches we could take which might ensure a better litigation program. Since your recent visit to the Office of General Counsel,...it occurred to me that you may well have thought of a better approach to the program, or some modification of our existing program, which you think might render greater success. As a special assignment, I am requesting that you provide me with your assessment of the strengths and weakness of our present litigation program, and with suggestions of anything we might do (within the authority of this District) which might improve our litigation program. Target completion of your report for June 1."

BC#77
6/1/88

MEMORANDUM to Bruner from James R. Neely, Jr., Regional Attorney. RE: Litigation Program. "I received your memo dated May 25, 1988, regarding the litigation program, on May 26, 1988. You requested that I prepare this report to you by June

1. You did not ask about any other priorities I might have had at the time. I would ask that you consider other priorities when making new assignments. If you recall, it was I who came up with the idea of using the Indianapolis model of big board as a means to generate cases for litigation. I had recommended it to you in August of 1986 when you first arrived in the district. However, you elected to go with the system you had previously maintained while in the Charlotte District Office. I again recommended implementation of the big board concept in June of 1987 during the Quality Assurance meetings. You began the implementation of the plan in November 1987. I still believe the concept of big board is sound as it was previously implemented in the Indianapolis District Office. However, I believe that the program as implemented here in St. Louis is not effective for a variety of reasons....My recommendations to improve the process are simple. I recommend that you assign three competent investigators to work under my direction in developing special handling cases. Two of the investigators would be in St. Louis and one would be in Kansas City. I would pick from the current inventory of special handling cases the ones that I think are most likely to produce potential litigation vehicles and would assign those cases to the three investigators. Under my supervision and that of the Supervisory Trial Attorneys, we would then expedite the investigations without compromising the integrity of the investigations. I would ask that the three investigators who are chosen be relieved of their non-special handling inventory or at the very least, reduce the inventory and allow the investigators to prioritize their investigation of special handling cases. While I cannot guarantee that we will reach the recommended goal which was required by Program Operations and the Office of General Counsel, I can assure you that it will be a much more effectively run program and would produce more potential litigation vehicles in a shorter turn-around time, though perhaps not in this fiscal year."

BC#78
6/1/88

MEMORANDUM to Troy and Charles Shanor, General Counsel, from Bruner. CC: Shelton. RE: Litigation Plan-St. Louis District Office. "As a follow-up to our conversation of May 18, I thought it would be useful to provide you with a more detailed description of the plan which we presently have in place for increasing the number of litigation recommendations in the District." [NOTE: The memo goes on to detail the Plans, Goals, and Personnel aspects thereof.]

BC#79
6/3/88

MEMORANDUM to Jim Neely from Bruner. RE: Litigation Program, Neely's memo. "Your plan for improving our litigation program cannot be considered complete until you have provided information on how you proposed to resolve the position management, organization management, personnel management, and labor relations concerns which would be created, should your proposal be implemented. In your response, please address these concerns in adequate detail. The concerns which you raised relative to the pre-litigation track cases identified by the screening committee

were brought to my attention a few months ago by Gretchen Houston. These problems were discussed with appropriate compliance personnel, and have been corrected. If you are aware of a specific case which is still being neglected, please provide the charge number and style. At least part of the problem you note regarding TMC trying to handle too many cases was resolved about 6 or 8 weeks ago when we started having the supervisors provide written up-dates on cases which are not on the Big Board, rather than presenting them in person to TMC. I am open to further refinements."

BC#80
6/14/88 — COMMITTEE SUBPOENA served on Bruner for testimony at June 23, 1988 Committee Hearing on EEOC administration and enforcement of ADEA. [NOTE: Bruner immediately notified EEOC Headquarters of the service of the subpoena on her].

BC#81
6/15/88 — AUDIT REPORTS by EEOC Office of Audits of the St. Louis District Office (SLDO) and Kansas City Area Office (KCAO). Draft copy provided SLDO April 16, 1988 and KCAO May 12, 1988. Each audit report includes comments of Office on the report. "OA's review disclosed that SLDO is performing its administrative operations and financial management functions in a generally satisfactory manner." [NOTE: Same audit report as to KCAO].

BC#82
6/17/88 — EEOC NOTICE PURSUANT TO SECTION 4 OF THE AGE DISCRIMINATION CLAIMS ASSISTANCE ACT OF 1988. That section required EEOC to give written notice not later than 60 days after April 7, 1988, to every person whose age claim is affected by the new law. EEOC gave that notice to 7,546 individuals, which total does not include charges processed by local agencies under contract with EEOC, 6,109 of the charges for which notice was given involved EEOC District Offices. The breakdown by District Office, including Area Offices within a District, is as follows:

District Office	Total
Atlanta	66
Baltimore (AO Norfolk, Richmond & Washington, D.C.)	289
Birmingham (AO Jackson)	140
Charlotte (AO Raleigh, Greensboro & Greenville)	125
Chicago	295
Cleveland (AO Cincinnati)	192
Dallas (AO Oklahoma & El Paso)	866
Denver	73
Detroit	290
Houston	64
Indianapolis (AO Louisville)	104
Los Angeles (AO San Diego)	503
Memphis (AO Nashville & Little Rock)	112
Miami (AO Tampa)	199
Milwaukee (AO Minneapolis)	450
New Orleans	23
New York (AO Boston & Buffalo)	926
Philadelphia (AO Newark & Pittsburgh)	487
Phoenix (AO Albuquerque)	90
St. Louis (AO Kansas)	290
San Antonio	76
San Francisco (AO Fresno, Oakland & San Jose)	264
Seattle	265

BC#83
6/21/88

MEMORANDUM to Bruner from Shelton labeled "CONFIDENTIAL." RE: FY88 Mid-Year Performance Review. "...With increased management attention in the areas noted above, adequate progress can be made toward goal attainment under this element ...The office is not making adequate progress toward goal attainment. (270 day inventory, inventory reduction, Hearings, FAA) III....the District reported 80 ADEA charges which have exceeded the statute of limitations and are still open... Special managerial attention is required if you are to adequately progress to goal achievement. ...In January, a newspaper article was released concerning the Director's position on and comments about the mishandling of a number of ADEA cases that lapsed the statute of limitations. Not only did the article present the Chairman in a negative light, but also the Director failed to advise the Director of FMP (Shelton) or the Director of OPO (Troy) that she was going on, or had already spoken to the press on a national and volatile issue... The Director's performance in this particular area needs definitive improvement. Overall, the Director should devote special attention to this element to ensure progress toward goal attainment."

BC#84
6/23/88

SPECIAL COMMITTEE ON AGING HEARING. RE: EEOC Administration and Enforcement of ADEA. Bruner, a subpoenaed witness, testified as to the above events and documents relating to the issue of the ADEA statutes of limitations and ADEA charges expiring under those statutes of limitation.

BC#85
6/24/88

SPECIAL COMMITTEE ON AGING HEARING. RE: Same Subject as 6/23/88 Hearing. EEOC Chairman Thomas testified: "...in early November (1987) I was told by another district director, in fact, that some offices, in particular, the St. Louis District Office, was not inputting accurate data into the computer... But I was not aware of it (age charges expiring under the statute of limitations) until December... But in November when I was alerted by our district director in New Orleans that people were keeping age data out of the system, the St. Louis District Office, that was when I became alarmed that we might have a much larger problem... No, I was not aware (that in the Baltimore District Office, 125 age cases were 'expected to exceed the statute of limitations by September 30.')... It wasn't reported to me...The age cases will always go up front. So, essentially what we are saying is we are going to have to push back all of the other cases, that is, the sex and race and national origin cases."

BC#86
6/27/88

OFFICIAL VISITATION with Bruner in St. Louis by Polly M. Mead, Director of EEOC Office of Program Services, the EEOC Official in charge of the EEOC "Quality Assurance Program" for EEOC District Offices.

BC#87
7/6/88

MEMORANDUM to Troy from Bruner. RE: Update of Litigation Track Cases, St. Louis District. CC: Shelton. "In my memo of June 1, 1988, I outlined

the plan in place...for development of litigation vehicles... As you can see from the attached (list) we now have a total of 15 active cases on which cause has been issued... As of June 30, we had produced 16 cause cases in St. Louis and 13 in Kansas City...our litigation plan is working...we will produce considerable more cause cases in FY88 than we did in FY86... Please let me know if you have any questions or comments."

BC#88
7/7/88 — MEMORANDUM to Shelton from Bivins. RE: Request for Assistance-Kansas City Area Office CDS Input. "Please assist us and the KCAO in cleaning up our databases...the KCAO has not succeeded in entering these charges into the CDS database as transfers (AO) to the New Orleans District Office..."

BC#89
7/12/88 — VERIFIED STATEMENT to Chairman Melcher from Bruner. Statement of facts as to alleged acts of harassment and retaliation against her by certain EEOC officials in connection with her appearance and testimony before this Committee June 23, 1988 under Committee subpoena, acts which are prohibited by Sections 18 USC 1505, 1512, 1513, and 1514 of the U.S. Criminal Code.

BC#90
7/13/88 — MEMORANDUM to Committee File from the Committee investigator RE: Telephone conference with Bivins that date. The investigator "telephoned Ms. Bivins to question her about EEOC chairman Clarence Thomas' testimony 6/24/88 regarding St. Louis...having intentionally withheld ADEA data from the...computerized charge tracking system... The following is a summary of Ms. Bivins' statements and responses to questions... I don't recall that I told him (Chairman Thomas) St. Louis was intentionally keeping data out of the system, but I do recall telling him the data wasn't accurate... I don't have any way of knowing whether they are intentionally doing anything with their record base...the Kansas City cases that I've been processing are still not in my database. They are having some computer problems and I still don't have them in my database... The information I relayed...was based on information from my supervisors who had gone over there... They did not tell me they (St. Louis) were intentionally withholding data from the system... They didn't characterize it as withholding."

BC#91
7/15/88 — MEMORANDUM to Shelton from Bruner. RE: Transfer of Cases to New Orleans. Pat Fields' Memo dated 7/7/88. "... Ms. Fields' memo...implies that KCAO is having some kind of problem entering the AO codes. This is not true. KCAO entered all AO codes on the 200 cases on September 2, 1987. This is the first time that we have heard that Ms. Fields is having trouble receiving the charges into her database... We can establish that KCAO entered the AO codes on September 2, 1987 on all but 8 cases (which we cannot access...)... Note that any code subsequent to an AO code must be entered by the receiving office... Ms. Fields is simply wrong in stating that she must enter 'false' closure dates. I trust you will work with Ms. Fields in straightening this matter out. If there is anything

we need to do from this end, please let me know right away."

BC#92
8/18/88 MEMORANDUM to Phillip B. Sklover from James R. Neely, Regional Attorney. RE: Litigation Development. "... I have recommended...that three investigators, two in St. Louis, one in Kansas City be assigned directly to me to develop potential litigation vehicles..."

BC#93
8/25/88 MEMORANDUM to Shelton from Bruner. RE: Charlotte Reports. CC: Richard Kashurba. "... We have been able to identify some of the programming problems contained in the Charlotte programs which lead to inaccurate results. We have discussed these problems with Leo Sanchez, who advises that ISS is presently in the process of making necessary changes in that program."

BC#94
9/1/88 MEMORANDUM to All Managers SLDO and KCAO from Bruner. RE: Assignment of ADEA Claims. "In the last District Director's conference call Jim Troy stated that it is now necessary for us to ensure that ADEA charges are completed within 120 days prior to the date of the alleged violation, so that adequate time is available for processing by DRP... I believe it is necessary to assign all age cases immediately upon receipt... If either office should discover that a backlog is developing in any statute, please notify me immediately. Please advise if you have any questions."

BC#95
9/12/88 MEMORANDUM to Bruner from Shelton. RE: Standard Case Management Reports. CC: Troy and Richard Kashurba, Director ISS. ".... Continuous effort is needed to establish and maintain reliable data.... If you need assistance in correcting your data, I will request ISS support, as well as arrange for a visit to your office by a district director whose system is fully operational. Additionally, my staff and I are available to assist you."

BC#96
9/23/88 MEMORANDUM to Charles Shanor, General Counsel from Bruner. RE: St. Louis Litigation Program. CC: Shelton and Jim Neely. "...the basic flaw with Jim's proposal is that he would not be able to investigate enough cases to produce a significant number of PMs.... I encourage you to visit the St. Louis District office for the purpose of observing our litigation program in operation."

BC#97
10/3/88 MEMORANDUM to Shelton from Bruner. RE: Mid Year Review--FY88. [NOTE: This is Bruner's response to the FY88 Mid-Year review by Shelton of Bruner's performance. Ms. Bruner deals with each critical aspect of the review, item by item, in refutation of Shelton's reasoning, justification and conclusion as to each criticism.]

BC#98
10/5/88 MEMORANDUM to Shelton from Bruner. RE: Standard Case Management Reports. "This responds to your memo of September 12, 1988... Unfortunately, the problem...is not related to our not having updated

our database... Our problem is related to the AO codes... You state that you verified the fact that the Charlotte report on active cases does not pick up cases having AO as the last code by testing the program out in another office. I do not question that you made such a test. However, I regret to tell you that in Kansas City, the report is picking up such cases... I wish it were working. The fact is, it is not. Attached, as examples, are several hard copies of charge data files...all codes have been properly entered, but the cases...appear as open... If there is anyone in ISS who can correct the problems noted, or a Director who can correct the problems noted, without changing the program itself, then I would sincerely appreciate having them... We would like nothing better than to have the reports work properly."

BC#99
10/17/88 LETTER to Chairman Thomas from Chairman Melcher requesting data as to ADEA charges which lapsed under ADEA statutes of limitations between April 8, 1988 and September 30, 1988, the end of FY 1988.

BC#100
10/24/88 MEMORANDUM to Shelton from Bruner. RE: FY 88 Accomplishment Report. "The following represents the accomplishments of the St. Louis District Office staff during FY 88, and are set forth in a format which parallels my SES agreement for that year."

BC#101
10/25/88 MEMORANDUM to Program Analysts East and West Consisting of guidelines to be used by the Analysts in making an "ADEA ANALYSIS" for the purpose of the SES Performance Appraisals for FY88. [NOTE: This is the first time EEOC Headquarters provided any guidelines for consideration of ADEA charges with reference to the ADEA statute of limitations for purposes of performance appraisals.]

BC#102
10/26/88 MEMORANDUM to Bruner from Shelton. RE: Report of FY88 Quality Review (St. Louis and Kansas City) Conducted by Field Management Programs--West (Shelton Director). "... To the extent that the information obtained during the review is reflected in our appraisal of your performance during FY88, you are requested to review this document carefully and respond in writing... By November 2, 1988." CC: Troy. [NOTE: Quality Review Field Work was completed March 4, 1988. See, BC#66.]

BC#103
10/28/88 MEMORANDUM to Bruner from Shelton (received by Bruner 10/31/88) RE: Performance Appraisal. "Attached is your 1988 performance appraisal for your review and signature.... Please call me by November 1, 1988, to set up an appointment to discuss the appraisal. Following the discussion...you will have seven calendar days in which to respond in writing to the appraisal official."

BC#104
11/2/88 EEOC REPORT to Chairman Melcher "pursuant to Public Law 100-283, the Discrimination Claims Assistance Act of 1988, covering the period April 7, 1988 through October 3, 1988. We are providing the

following information: (1) The number of persons who have claims to which section 3 applies and the dates charges based on such claims were filed with the Commission...we estimate (emphasis provided) that 8,876 of the remaining notices were sent to people who may (emphasis by EEOC) have claims.... Although we have conducted a review of 1,628 case files, we have not conducted a case-by-case review of every record in our files that contains a charge to which ADCAA may apply in order to more accurately assess whether a claim may exist...most of the files closed before 1986 were destroyed in accordance with a records destruction schedule that was in effect at the time and has since been amended to provide for a longer period of records retention.... We are unable to review any of those case files that were destroyed to determine whether a claim may exist... Where the filing date is not provided, the information is unavailable... (2) EEOC and 43 state and local fair employment practices agencies sent out a total of 10,476 notices pursuant to ADCAA." [NOTE: Four days short of six months after the 1988 law was enacted to give lapsed ADEA charge claimants an additional statute of limitations period of 540 days, EEOC still does not know how many ADEA claimants are affected by the 1988 law, nor who they are. The filing date is missing for literally hundreds of the claims listed in the report.]

BC#105
11/9/88

MEMORANDUM to Shelton from Bruner. RE: Response to FY88 Evaluation. "During our conversation of November 2, 1988, you stated unequivocally that my rating under Element III was determined by the three ADEA cases in Kansas City. You also acknowledged that this was a standard of measurement of which I had not been previously made aware... Element III contains nine standards, of which case management is only one. The case management standard contains six substandards, of which the substandard pertaining to the management of ADEA cases is only one. Thus, my rating for FY88 has been determined by your assessment of my performance under one substandard of one standard out of a total of nine standards. Moreover, the method used in evaluating my performance under this substandard was one which, by your own admission, was never revealed to me at any time prior to the end fiscal year." [NOTE: Bruner asserts that her performance evaluation was not made in compliance with established Senior Executive Service Performance Appraisal Review Procedures.]

BC#106
11/9/88

LETTER to Chairman Thomas from Senator Melcher with reference to the November 2, 1988 Report under the Age Discrimination Claims Assistance Act of 1988, pointing out that that Report does not provide data and information in compliance with the 1988 Act and requesting data and information which complies.

BC#107
11/18/88

LETTER to Chairman Melcher from EEOC with November 17, 1988 Report to Chairman Thomas from Troy as to the number of ADEA charges which had lapsed under the ADEA statute of limitations between April 8, 1988 and September 30, 1988, the end of FY 1988 -- 195 for "unacceptable reasons" (which includes unstable managerial leadership for much of the

fiscal year); and 241 for "acceptable reasons"; making a total of 436 in 5 months and 22 days, (an average of 3.5 charges per business day during that period). This letter and Report are in response to Chairman Melcher's letter of October 17, 1988.

BC#108
12/14/88

MEMORANDUM to Bruner from Jo-Ann Henry, Director, EEOC Personnel Management Services, informing Ms. Bruner that her final Performance Appraisal Rating for FY 1988 is "Minimally Satisfactory" and that since her final Performance Appraisal Rating for FY 1987 was also "Minimally Satisfactory", she was being removed from the Senior Executive Service in accordance with the provisions of 5 USC 4314 and that she would receive further notification from headquarters.

BC#109
12/20/88

MEMORANDUM to Bruner from Chairman Thomas, as a follow-up to Ms. Henry's memo of 12/14/88, instructing Bruner to report by January 31, 1989 to the Phoenix District Office as Deputy District Director, with a GM 15 status (a non-SES status).

APPENDIX

JOHN MELCHER, MONTANA, CHAIRMAN
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United States Senate
SPECIAL COMMITTEE ON AGING
WASHINGTON, DC 20510-6400

December 30, 1988

The Honorable Clarence Thomas
Chairman
Equal Employment Opportunity Commission
Washington, D.C. 20507

Dear Chairman Thomas:

We have learned that it is your intention to remove Ms. Lynn Y. Bruner from the Senior Executive Service and from her position as Director of the St. Louis District Office and to appoint her to a Deputy District Director position in another District Office.

The evidence produced by this Committee in its oversight investigation of the Commission's administration and enforcement of the Age Discrimination in Employment Act convinces us that the proposed demotion of Ms. Bruner is in retaliation for her testimony before, and cooperation with, this Committee in that oversight investigation.

Her testimony and cooperation enabled this Committee to document the omission, prior to October 1, 1987, of the ADEA statutes of limitations from the Commission's official policies, practices and procedures for processing ADEA age discrimination charges.

The Committee's investigation revealed that, as the direct result of that omission, thousands of age discrimination victims lost their rights under ADEA in 1986, 1987 and 1988, while their charges were being processed by the Commission.

In its most recent report to this Committee, the Commission admits that the number of such victims could have been as many as 10,000 by April 7, 1988.

The documents and information produced by this Committee's investigation caused the Commission to amend its official policies, practices and procedures to require the policing of ADEA statutes of limitations in the processing of ADEA age discrimination charges.

If the Commission's top headquarters administrators had not ignored the statute of limitations warnings from Ms. Bruner in early 1987, the Commission could have corrected its policies, practices and procedures much earlier and thereby greatly

reduced the number of age discrimination victims to lose their rights in 1987 and 1988 while their charges were being processed by the Commission.

The question of the legality of your proposed demotion of Ms. Bruner aside for the purposes of this letter, we view your proposed retaliation against her as most disturbing, as obstructive of the oversight and investigative functions of the Committees of the United States Senate.

Ms. Bruner did not approach this Committee. She was first approached by staff investigators of this Committee. She did not testify voluntarily before this Committee. She appeared pursuant to Committee subpoena.

Your proposed retaliatory action against her sends a message to other Federal employees and officials that testimony before, and cooperation with, a Senate Committee can subject them to the risk of retaliation by a superior.

We respectfully urge you to re-consider the actions and decisions which result in Ms. Bruner's demotion.

Sincerely,

John Melcher

John Melcher, Chairman

enclosure

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